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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE THIRD INSTALMENT OF "E2" CLAIMS

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7	Criteria for additional categories of Claims	S/AC.26/1991/7/Rev.1
8	Determination of ceilings for Compensation for mental pain and anguish	S/AC.26/1992/8
9	Propositions and conclusions on compensation for business losses: types of damage and their valuation	S/AC.26/1992/9
10	Provisional rules for claims procedure	S/AC.26/1992/10
13	Further measures to avoid multiple recovery of compensation by claimants	S/AC.26/1992/13
15	Compensation for business losses resulting from Iraq's unlawful invasion and occupation of Kuwait where the trade embargo and related measures were also a cause	S/AC.26/1992/15
16	Awards of interest	S/AC.26/1992/16
19	Military costs	S/AC.26/Dec.19 (1994)

Panel reports and recommendations referred to in the present report

Short name	Title	Document No.
B(2.1) report	Report and recommendations made by the panel of Commissioners concerning part one of the second instalment of claims for serious personal injury or death (category "B" claims)	S/AC.26/1994/4
C(1) report	Report and recommendations made by the panel of Commissioners concerning the first instalment of individual claims for damages up to US$100,000 (category "C" claims)	S/AC.26/1994/3
C(7) report	Report and recommendations made by the panel of Commissioners concerning the seventh instalment of individual claims for damages up to US$100,000 (category "C" claims)	S/AC.26/1999/11
D(2.1) report	Report and recommendations made by the panel of Commissioners concerning part one of the second instalment of individual claims for damages above US$ 100,000 (category "D" claims)	S/AC.26/1998/11

Short name	Title	Document No.
The WBC Claim	Report and recommendations made by the panel of Commissioners appointed to review the Well Blowout Control claim	S/AC.26/1996/5/Annex
E1(3) report	Report and recommendations made by the panel of Commissioners concerning the third instalment of "E1" claims	S/AC.26/1999/13
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E3(2) report	Report and recommendations made by the panel of Commissioners concerning the second instalment of "E3" claims.	S/AC.26/1999/5
E3(3) report	Report and recommendations made by the panel of Commissioners concerning the third instalment of "E3" claims	S/AC.26/1999/1
E4(1) report	Report and recommendations made by the panel of Commissioners concerning the first instalment of "E4" claims	S/AC.26/1999/4
F1(1.1) report	Report and recommendations made by the panel of Commissioners concerning part one of the first instalment of claims by Governments and International Organizations (category "F" claims)	S/AC.26/1997/6
F1(1.2) report	Report and recommendations made by the panel of Commissioners concerning part two of the first instalment of claims by Governments and International Organizations (category "F" claims)	S/AC.26/1998/4
F1(2) report	Report and recommendations made by the panel of Commissioners concerning the second instalment of "F1" claims	S/AC.26/1998/12
F1(3) report	Report and recommendations made by the panel of Commissioners concerning the third instalment of "F1" claims	S/AC.26/1999/7

Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission"), at its twenty-first session in 1996, appointed the Panel of Commissioners composed of Messrs. Bernard Audit (Chairman), José-María Abascal and David D. Caron ("the Panel") to review claims filed with the Commission on behalf of corporations and other legal entities. This report contains the Panel's recommendations to the Governing Council, pursuant to article 38(e) of the "Provisional Rules for Claims Procedure" ("the Rules"), 1/ concerning the third instalment of claims reviewed by the Panel.

2. The instalment consists of 179 claims submitted by corporations operating in the transport sector. A description of the claims is set out in section I below. These claims were selected by the secretariat of the Commission from the "E2" claims on the basis of criteria established under the Rules. These include (a) the date of filing with the Commission, (b) the claimant's type of business activity, and (c) the type of loss claimed. Pursuant to article 38(d) of the Rules, the claims were reviewed by the Panel within 12 months of their receipt from the Executive Secretary. The procedure used by the Panel in processing the claims is described in section II below.

3. The role and tasks of a panel of Commissioners, the applicable law and criteria, the liability of Iraq and a description of the applicable evidentiary requirements are set forth in this Panel's first report. 2/ Within this framework, three tasks have been entrusted to the Panel in the present proceedings. First, the Panel must determine whether the various types of losses alleged by claimants are, in principle, compensable before the Commission. Second, it must verify whether the losses that are in principle compensable have in fact been incurred by a given claimant. Third, it must value those losses found to be compensable and in fact incurred. The implementation of these successive steps with regard to the present instalment is described in sections III to VI, followed by the Panel's recommendations in section VII.

I. THE CLAIMS

4. The claimants are companies from different parts of the world which are, or were, engaged in a variety of activities connected with air, shipping and road transport. The invasion of Kuwait on 2 August 1990 by Iraq, the subsequent occupation of that country and the Allied Coalition actions to liberate it, severely disrupted air, shipping and road transport to, from and within the Middle East region. As regards transport to and from Iraq and Kuwait, albeit for different reasons, operations virtually came to a halt.

5. Overall, claimants allege that Iraq's invasion and occupation of Kuwait directly caused a decline in revenue and an increase in costs of operations, as well as material losses (such as loss of property and equipment in Iraq and Kuwait). As described by claimants, the disruptions to transportation took many forms. In a number of instances, air, maritime and road transportation operations to the Middle East were cancelled. In other instances, operations that continued to the region were substantially reduced, and operations which had traversed the region to reach destinations in Europe or the Far East were re-routed. Coincident with the disruptions, there was a considerable increase in the cost of those operations that continued throughout the war. In addition to the immediate disruptive effect of Iraq's invasion and occupation of Kuwait, claimants also allege that the trade embargo and related measures implemented pursuant to resolutions of the UN Security Council both reduced traffic and limited the profitability of operations that continued.

6. Against this general background, the claims are described in greater detail for each of the transport sectors involved.

A. Claims submitted by companies engaged in the air transport industry

7. Many claimants from the airline industry have submitted claims for loss of profits resulting from discontinued or reduced operations to destinations to, from or within the Middle East. As well as a decline in activities, other claimants have alleged an increase in the cost of operations relating to war risk insurance premiums, fuel costs, re-routing of operations and staff costs. The claimants offer a variety of reasons for such losses, including dangers presented by on-going military operations, the threat of military action in the area and restrictions imposed by the trade embargo and related measures. Less often, the claimants allege that risks were posed by civil unrest in Iraq and Kuwait, and by the taking of hostages and other forms of illegal detention.

8. For purposes of analysis, the airline industry claimants are considered by the Panel as either "regional" or "global". A regional airline is an airline based within or in close proximity to the Middle East. A global airline is an airline based outside the Middle East with far-reaching operations, including some business activity in the Middle East.

9. Both categories present claims in respect of loss of profits resulting from suspended or cancelled scheduled services to Iraq, Kuwait and other locations in the Middle East, or the cessation of tourist charter flights to and from destinations in, inter alia, Cyprus, Egypt, Israel, Jordan and Turkey. One claimant seeks to recover for loss of profits resulting from the loss of use of an aircraft destroyed on the ground at Kuwait Airport during the hostilities.

10. Many airline claimants, primarily global airlines, maintain that they had to re-route flights to and from destinations in the Far East that had formerly over-flown the Middle East, thereby incurring additional costs.

11. A number of airlines seek compensation for the cost of additional premiums for war risk insurance. Most claimants maintained war risk insurance policies before the invasion of Kuwait. After the invasion, underwriters required the payment of "additional premiums" from airlines to maintain the cover under such policies for operations to destinations in the Middle East. Certain regional airlines, because they are based within an "additional premium area" designated by insurance underwriters for most of the duration of the hostilities, claim for considerable additional expenditure on insurance premiums. Claims are also submitted for additional war risk premiums levied in respect of special flights undertaken to assist in the return of nationals or on behalf of the International Committee of the Red Cross from locations in the Middle East.

12. Many airlines claim for increased fuel costs both on the basis of the general rise in the price of aviation fuel that occurred during the relevant period and of increased fuel consumption resulting from re-routing to avoid the conflict area.

13. Some claimants state that, in order to offset some of the additional costs of insurance premiums and fuel, they imposed surcharges on passenger fares and cargo rates as approved by resolutions of the International Air Transport Association ("IATA"). 3/

14. This instalment also includes airline claims for costs relating to evacuation operations conducted by claimants voluntarily, or by direction

of their national governments. Losses claimed include, inter alia, actual costs of the flights and the costs of transporting evacuees by land from Iraq and Kuwait to other locations from which the flights departed. In some cases, the profit allegedly lost from commercial operations through use of aircraft for evacuations is also claimed.

15. The claims of regional airlines contain types of losses not alleged by airlines based outside the region. For example, two of the regional airlines state that they had to relocate their entire fleets to locations in Europe and North America to avoid further increases in the war risk insurance premiums payable and because of the dangers posed by scud missile attacks. Such relocation allegedly resulted in major disruptions to their operations, as well as substantial additional costs.

16. Regional airlines also claim that the cancellation of operations by foreign airlines carrying passengers and cargo into the Middle East resulted in the disruption of contracts for transport-related services which they had, hitherto, provided to other airlines that stopped at airports in the region. These include the provision of catering services, ground handling services and, in one case, pilot training facilities. There are also claims for a decline in income from airport and in-flight duty free sales because of the reduction in the number of passengers during the period of the invasion and occupation.

17. Airlines that maintained offices in Kuwait and Iraq claim for the rental paid for periods during which they could not use such offices, generally from the date of the invasion until the cessation of hostilities and, in some cases, for an extended period thereafter. Certain airlines present similar claims in respect of offices in other locations, such as Damascus, Syria, and Amman, Jordan, during periods when operations to those destinations were suspended.

18. Claims have also been submitted for the loss of tangible property at premises located in Iraq and Kuwait. Some are in respect of furniture, equipment and vehicles that were at offices in Kuwait and Baghdad at the time of the invasion. There are also claims for aircraft components, tools, equipment and other tangible property which were stored at Kuwait and Baghdad airports at the time of the invasion. One airline claims for the losses arising from the fraudulent use of tickets stolen from its premises in Kuwait, as well as the cost of maintaining an IATA database system, from October 1990 to March 1994, to prevent the fraudulent use of such stolen tickets.

19. Some claimants seek to recover the amount of salaries paid to staff located in Kuwait and Iraq whom, it is alleged, were unable to work because of the cessation of their operations or because of detention of such staff by Iraq. Also claimed are costs of relocation, severance payments and compensation provided to staff at claimants' offices in Kuwait and other locations in the Middle East. In a few instances, claims include costs relating to the loss or repair of lost or damaged household and other personal property of staff members in respect of which the claimants have made payments to those persons.

20. Furthermore, some claims are in respect of compensation paid to staff who were held as "human shields" or were otherwise illegally detained by Iraq. Certain claimants whose staff were detained also seek to recover the costs of establishing support centres and maintaining contact with employees' families, as well as costs of counselling and other assistance provided to staff and their families.

21. A number of airline claimants seek compensation for funds held in bank accounts in Iraq and Kuwait. Certain claimants also seek to recover sums owed but unpaid by sales agents based in Kuwait or, in one instance, in Iraq, at the time of the invasion.

22. Some claims are based on the breach of "interline" agreements, predominantly between Iraqi Airways and foreign airlines. Such agreements, concluded under the auspices of IATA, arrange monthly payments between airlines through a central IATA clearing house for, inter alia, the provision to each other of ground services and passenger and cargo transport services. 4/

23. One airline claimant seeks to recover in respect of payment on an earlier breached hotel management contract with the Government of Iraq, alleging that the invasion and occupation of Kuwait interrupted negotiations that would have secured payment from the Government of Iraq in respect of that breached contract. The same claimant also seeks to recover in respect of a hotel management contract being performed in Kuwait and allegedly interrupted by the invasion. Another claimant seeks compensation in respect of a contract concluded with Iraqi Airways to overhaul an aircraft belonging to that company.

24. In addition to losses sustained during the hostilities, some airline claimants seek costs incurred by them after the cease-fire in trying to rebuild their businesses, such as the costs of advertising, attending trade fairs and conducting promotional tours for tour operators, journalists and

travel agents, fees paid to public relations consultants and for related legal services.

25. Some regional airlines seek compensation for losses related to investment or financing costs that they allegedly incurred as a consequence of the invasion and occupation, including the consequences of a decline in operations. One such claim involves the sale of an aircraft at a price below the net book value because of liquidity problems allegedly caused by the invasion and occupation. Another claimant seeks compensation for interest that, it alleges, it would not have had to pay if the invasion of Kuwait had not caused a lack of foreign currency income and the postponement of the sale of an aircraft. Yet another regional airline claims that it was compelled to pay a "risk fee" which was added onto the interest payable on an existing loan.

B. Claims submitted by companies engaged in the shipping industry

26. Shipping operations in the Middle East were significantly affected by Iraq's invasion and occupation of Kuwait. It is widely accepted that at least 1,200 mines were laid by Iraq off the waters of Kuwait, many of which broke free and were later to be found throughout the northern parts of the Persian Gulf. The massive deployment of Allied Coalition naval forces in the Persian Gulf and the Red Sea also had an effect upon merchant shipping. Movements of ships were restricted, voyages to certain destinations were cancelled, and to others re-routed.

27. The shipping companies and, in some cases, their agents outside the region, allege a decline in their profitability during the period of the invasion. Many claimants assert that the inability to undertake or complete voyages destined for ports in the Middle East resulted in a loss of profits. Likewise, claimants allege that the activities of inspectors, acting pursuant to the UN authorized trade embargo against Iraq and Kuwait, resulted in restricted access to the Jordanian port of Aqaba which, prior to the imposition of the trade embargo, was the main sea port servicing Iraq in addition to Jordan itself. This restricted access, and requirements as to loading of cargo to facilitate inspection, are alleged by claimants to have resulted in substantial loss of profits. Ports in other countries in the region, including Egypt, Iran and Israel, are alleged by claimants to have been similarly affected by the UN authorized inspections.

28. Certain claims relate to the inability to gain access to vessels that were detained within the theatre of military operations during the relevant

period. Thus, one claimant seeks recovery in respect of the loss of profits resulting from the detention for 21 days of one of its vessels which was in Kuwait at the time of the invasion; another claims in respect of a vessel which was on the Basra River in Iraq at the time of the invasion and was compelled by the Iraqi authorities to remain in Iraq.

29. Shipping claimants, like airlines, allege that they experienced significant increases in the cost of maintaining war risk insurance for voyages to and through the Middle East. Seventy-two claimants, notably, from Cyprus, Denmark, Greece, Italy, Liberia, Malta and Panama seek compensation for such additional insurance costs. Certain of these claimants were engaged in the provision of services to the Allied Coalition Forces.

30. A number of claims are also presented by shippers because certain organisations of shipowners, such as the Far Eastern Freight Conference, introduced a "Middle East emergency surcharge" intended to offset the costs of the additional war risk premiums which shipowners had to pay for voyages to the Middle East. Shippers of goods, who had contracted with shipowners to undertake transport operations, allege that they paid the surcharge and now seek to recover the amounts paid.

31. Compensation for additional costs is sought by certain of the shipping claimants in respect of the general increase in fuel prices for operations in the Middle East and world-wide and, in one case, in respect of operations within Europe.

32. Other additional shipping costs are also alleged to have been incurred as a consequence of the invasion and occupation of Kuwait, such as loss of the income-producing capacity of a vessel as a result of the inability to deliver and unload cargoes at destination ports in a timely manner.

33. A number of shipping claimants seek compensation for bonus payments made to maritime staff as incentives to work in the Red Sea and Persian Gulf waters. Certain claimants allege that war zone allowances were paid pursuant to "special collective agreements" concluded between the Greek Shipowners Association and the Greek Seamen's Federation, and ratified by the Greek Government. 5/ Other claimants paid war zone allowances to their crew in the absence of such agreements so that they could continue operations in the Middle East. In the case of one Saudi Arabian claimant, such payments were said to be necessary to enable the company to meet its existing contractual obligations. Additional costs incurred in the provision of protective equipment for staff and vessels at harbours and

ports in these waters are also claimed. In the case of one claimant, this included the purchase of gas masks and the installation of extra security devices on vessels.

34. A number of claimants seek to recover under contracts with the Iraqi Shipping Line. Such claims relate to allegedly unpaid invoices in respect of agency services provided to the Iraqi Shipping Line at overseas ports and to the rental of shipping containers by the Iraqi Shipping Line.

35. As in the case of airline claimants, many shipping claimants seek recovery for non-payment of obligations by parties in Iraq and Kuwait. Others claim in respect of losses allegedly arising from their inability to perform contracts in respect of transport operations to Kuwait.

36. Tangible property losses are also claimed by shipping claimants, particularly in respect of the loss of shipping containers that were in ports in Kuwait and Iraq at the time of the invasion.

37. Many shipping claimants seek to recover the costs of evacuating their staff from Kuwait, Iraq, Dubai and other locations in the Persian Gulf, as well as nationals at the request of their governments.

38. Compensatory payments made to staff for distress allegedly caused by incidents related to the hostilities are also claimed. Thus, there are claims for payments made to crew members for mental suffering allegedly caused by their detention by Iraqi soldiers when vessels were seized in Kuwait; and for the cost of treatment for psychological distress allegedly caused to crew members during inspections conducted by Allied Coalition naval forces pursuant to the trade embargo.

C. Claims submitted by companies engaged in the road transport industry

39. The prevailing conditions earlier described are also alleged to have affected road transport activities. Operations to Iraq and other destinations were cancelled. Operations that were on-going at the time of the invasion experienced disruption and diversion, and employees who found themselves in the area faced the risks posed by conditions of civil disorder and the arbitrary actions of Iraqi officials.

40. Most of the claims submitted by road transport companies relate to the transportation of passengers and cargo to Iraq and Kuwait. The closure of borders by Iraq and then by countries neighbouring Iraq and Kuwait, as a measure implementing the trade embargo, had an immediate effect on

operations. Claimants also allege that military action, civil disorder and actions of Iraqi officials interfered with road transport operations. Claimants, thus, allege substantial decline of business, particularly because of their inability to complete existing transportation contracts. For example, companies based in Belgium, Egypt and Turkey assert losses due to the inability to perform contracts to provide transportation services to Iraq and Kuwait. In addition, claimants allege that they were forced to re-route or cease operations to other parts of the Middle East because it was unsafe to traverse Iraq and Kuwait.

41. The disruption of operations at the port of Aqaba in Jordan also provides the basis of many road transport claims. Operators from Jordan state that the reduction of the number of vessels calling at Aqaba port resulted in a drop in the volume of cargo to be transported on land to and from the port, causing a loss of profits in respect of international operations, particularly to Iraq, but also internally within Jordan.

42. Several road transport claimants allege losses resulting from the failure by Iraqi governmental entities to pay for services for the transport of goods to and from Iraq. Claimants also invoke the inability to perform contracts in respect of operations to Kuwait and other parts of the Middle East because of the conditions prevailing in Iraq and Kuwait. One road transportation claimant seeks to recover for alleged inability to perform contracts within Egypt.

43. One Jordanian claimant asserts that the proximity of military operations resulted in a substantial decline in passenger demand for the bus services that it provided in Amman and the surrounding metropolitan area.

44. A number of the road transport claimants seek to recover for the loss of tangible assets, including spare parts, tools and other equipment located in Iraq or Kuwait. For example, a claimant seeks compensation for furniture and equipment, as well as rental costs in connection with a campsite maintained in Iraq for the company's drivers. Losses relating to the destruction of or damage to trucks are also claimed, together with a loss of the income expected to be derived from such vehicles. Claims for increased costs of spare parts and maintenance costs are also submitted.

45. Claims are also made for payments of salaries of staff. One claimant seeks to recover payments made to families of drivers killed while driving tankers from Iraq.

II. PROCEDURAL HISTORY

46. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported the significant factual and legal issues raised by the present claims in his twenty-fourth and twenty-fifth reports issued on 8 July 1998 and 13 October 1998, respectively. A number of Governments, including the Government of Iraq, submitted their information and views on the Executive Secretary's reports. These responses were transmitted to the Panel pursuant to paragraph 1 of article 32 of the Rules.

47. The secretariat made a preliminary assessment of the claims in order to ensure their compliance with the formal requirements established by the Governing Council in article 14 of the Rules. As provided by article 15 of the Rules, deficiencies identified were communicated to the claimants in order to give them the opportunity to remedy those deficiencies.

48. The Panel commenced its substantive review of the claims on 14 January 1999, when the claims were submitted to it by the Executive Secretary pursuant to article 32 of the Rules.

49. The Panel was assisted by accounting consultants, for a part of the review and analysis period, and by accountants within the secretariat, at all times (collectively referred to as "the accountants"). The secretariat, together with the accounting consultants, undertook a preliminary review of the claims in order to identify what additional information and documentation, if any, were required to allow the Panel to properly verify and value the claims. Pursuant to article 34 of the Rules, notifications were dispatched to claimants ("article 34 notifications"), in which they were asked to respond to a series of questions, generally of a standard nature, and to provide additional documentation. The information provided by the claimants in response to the article 34 notifications was used in the verification of the claims, and in the determination of the appropriate amount of compensation, if any, to be awarded to a given claimant.

50. The Panel also requested the secretariat to gather information on a number of issues relevant to the claims, including the range and use of Iraqi scud missiles during the period of Iraq's invasion and occupation of Kuwait, the operation of the war risk insurance market, the variation of oil prices during the relevant period, the international regulation of airline routes and the practice of airlines in relation thereto, and the extent of mine-laying in the Persian Gulf during the war.

III. LEGAL ISSUES

51. The present instalment raises legal issues that have been addressed in previous reports of this and other panels of the Commission, as well as some new ones. In dealing with the former, the Panel will recall its earlier findings and elaborate on those findings to the extent required by the claims in the present instalment.

52. Firstly, the Panel gives further consideration to the requirement of directness under Security Council resolution 687 (1991), with particular regard to losses relating to the use of airspace and maritime areas outside Iraq and Kuwait. Secondly, the Panel considers a new legal issue, namely, the compensability of additional costs of business operations. Thirdly, the Panel considers the jurisdiction of the Commission as regards losses related to contracts with Iraqi private parties, also a new legal issue. Fourthly, the effect of the trade embargo and related measures as regards transportation operations is examined. Finally, the Panel considers the scope of a claimant's duty to mitigate losses.

A. The requirement of directness

53. Under Security Council resolution 687 (1991), the fundamental jurisdictional requirement for claims before the Commission is that the loss or damage be a direct consequence of the invasion and occupation of Kuwait. Paragraph 21 of Governing Council decision 7 provides guidance on the requirement of directness applicable to category "E" claims by listing five categories of events and circumstances that meet that requirement. 6/ As the Panel has already noted, however, paragraph 21 is not exclusive and leaves open the possibility that there may be causes of "direct loss" other than those enumerated. 7/

54. As in its first and second reports, the Panel must interpret the meaning and scope of the specific events and circumstances listed in paragraph 21 in the particular context of the claims under review. With regard to the transportation industry, the Panel must give specific consideration to the geographical area and time period within which certain losses may be considered to have been directly caused by the events identified in paragraph 21 of decision 7.

1. Military operations or threat of military action by either side

55. Paragraph 21(a) of decision 7 provides that loss or damage resulting from "military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991" is directly caused by the invasion and occupation of Kuwait.

56. In its second report, this Panel concluded that "military operations" included both:

> "actual and specific military activities by Iraq in its invasion and occupation of Kuwait, or by the Allied Coalition in its efforts to remove Iraq's presence from Kuwait. The geographic scope of military operations corresponds to the zone of combat as circumscribed by the actions of either side." 8/

57. The Panel determined, in particular, that the geographical scope of military operations did not include "remote locations utilized as staging areas for supplies and personnel or the airspace traversed when transporting such supplies and personnel". 9/

58. The Panel has already determined, in its first report, that a claimant seeking compensation for loss or damage resulting from a "threat" of military action in a location outside Iraq or Kuwait must make a specific showing that such loss or damage was caused directly by a "'credible and serious threat that was intimately connected to Iraq's invasion and occupation' and was within the actual military capability of the entity issuing the threat, as judged in the light of the 'actual theatre of military operations' during the period involved". 10/

59. The present instalment of transport claims calls for new determinations concerning the scope of military operations and threat of military action in locations outside Iraq and Kuwait, as well as the time periods during which these existed. In particular, the claims under review may require separate consideration of waters, airspace and land. 11/ The Panel now considers these issues with respect to the various locations and time periods in which losses are alleged to have been sustained, so as to delineate the limits of the compensable area and period ("the compensable area and period"). Where the record does not show that the losses arose from the claimant's operations in the compensable area and period, such losses are not compensable.

(a) Iraq and Kuwait

60. In its second report, the Panel, referring to the Allied Coalition Forces' military operations, decided that the geographical scope of those military operations included, in addition to the territories of Iraq and Kuwait, "such immediately adjacent land territory, waters and airspace as were a necessary part of the conduct of such operations". 12/ The Panel hereby determines that the adjacent waters and superjacent airspace of Iraq and Kuwait were the subject of military operations (and threats of military action) to the same extent as the land territory of those countries from 2 August 1990 to 2 March 1991. Accordingly, losses arising as a result thereof are, in principle, compensable.

(b) Saudi Arabia

61. The Panel recalls the findings contained in its first report, that "the evidence is clear that [Saudi Arabia] was credibly threatened with military action by Iraq during the period 2 August 1990 to 2 March 1991". 13/ Such threats "were sufficiently credible and serious, and intimately connected to the relevant military operations" to meet the requirements of paragraph 21(a) of decision 7. Furthermore, the actual launching of scud missiles by Iraq against Saudi Arabian territory between 18 January 1991 and 2 March 1991 constituted actual military operations for the purposes of paragraph 21.

62. The Panel confirms that losses sustained within the range of Iraq's scud missiles in Saudi Arabia, including the adjacent waters and superjacent airspace are, in principle, compensable for the period of 2 August 1990 to 2 March 1991.

63. In contrast, the Panel finds that Saudi Arabian locations on the Red Sea and in the southern part of the country, being outside the range of Iraq's scud missiles, were not the subject of a threat of military action by Iraq nor of actual military operations. Although locations in southern Saudi Arabia were used by Allied Coalition Forces, they must be regarded as "remote locations utilized as staging areas for supplies and personnel or the airspace traversed when transporting such supplies and personnel". 14/ Consequently, losses related to transport operations in those areas are not direct losses resulting from the invasion and occupation of Kuwait and are not compensable.

(c) Israel

64. In its second report, the Panel concluded that the repeated launching of scud missiles by Iraq upon Israel, beginning on 18 January 1991, and the assistance of Allied Coalition Forces aimed at eliminating or defending against such attacks, constituted "military operations". 15/ The Panel also determined that the threats directed against Israel by Iraq were serious and credible from 15 January 1991, the deadline under resolution 678 (1990) for Iraq's withdrawal from Kuwait, because such threats were linked to actions undertaken to remove Iraq's presence from Kuwait. 16/ Accordingly, the Panel decided that the entire territory of Israel was the subject of a threat of military action from 15 January 1991, and of actual military operations from 18 January 1991 to 2 March 1991.

65. The Panel considers that the launching of scud missiles endangered transport related activities in the territory of Israel. Thus, the Panel determines that there were military operations and threat of military action, for the relevant periods, against the land, adjacent waters and airspace of Israel.

(d) Jordan

66. The Panel finds that, although Jordan was within the range of Iraq's military capability, Iraq did not direct a specific threat of military action against Jordan. However, with regard to Jordanian airspace, the Panel has already found that the launching of scud missiles by Iraq against Israel, commencing on 18 January 1991, constituted military operations. 17/ In order to reach their targets, the scud missiles directed against Israel often would have traversed Jordanian airspace; Jordanian airspace thus became a necessary part of the area of military operations by Iraq against Israel. Accordingly, the Panel determines that losses sustained by airline claimants directly resulting from the traversal of scud missiles through Jordanian airspace, or the threat thereof, are compensable, in principle, from 15 January until 2 March 1991.

67. While there was considerable disruption of operations to and from the Jordanian port of Aqaba, on the Red Sea, for the reasons further explained at paragraph 75 below, the Panel finds that these were a consequence of the trade embargo and the inspection measures taken to enforce it, and did not result from the threat of, or actual, military operations.

68. The Panel finds, therefore, that there was no threat of military action directed against, nor actual military operations in, the land territory or waters of Jordan.

(e) Bahrain and Qatar

69. This Panel has not previously considered whether there were military operations or threats of military action, by either side, directed against Qatar or Bahrain. 18/ This Panel finds that Qatar and Bahrain were subject only to the non-specific threats directed by Iraq against all members of the Allied Coalition.

70. The Panel notes, however, that Iraqi scud missiles struck Bahrain on 22 February and on the night of 25 February 1991; and struck Qatar on the night of 25 February 1991. 19/ Applying the criteria outlined in paragraphs 56-59 above, the Panel concludes that these events constituted military operations, the effects of which lasted until the cease-fire resolution came into effect on 2 March 1991. Accordingly, the Panel finds that, from the respective dates of these events until 2 March 1991, there were military operations or a threat thereof affecting the land, waters and airspace of Bahrain and Qatar. Therefore, losses caused by these events are, in principle, compensable.

(f) The United Arab Emirates

71. The Panel also considers for the first time whether military operations or the threat of military action existed in or against the United Arab Emirates. Applying the criteria outlined in paragraphs 56-59 above, with respect to the assessment of the existence of a threat or actual military operations in a location outside Iraq and Kuwait, the Panel concludes that there was no credible and serious threat of military action directed against the United Arab Emirates. The territory of the United Arab Emirates was beyond the known range of Iraq's scud missiles and any threat made against it by Iraq was part of the general hostility that was expressed by Iraq against all members of the Allied Coalition.

72. Although there was a substantial presence of Allied Coalition Forces in the United Arab Emirates during the hostilities, that presence was only for the provision of support to the actual military operations taking place in Iraq, Kuwait and northern parts of Saudi Arabia. The Panel finds, therefore, that the United Arab Emirates was a "remote location utilized as a staging area for supplies and personnel or the airspace traversed when transporting such supplies and personnel" 20/ and was not a location in

which there were military operations in the context of paragraph 21(a) of decision 7.

(g) The Persian Gulf

73. Claims in the present instalment allege disruption of shipping operations in the Persian Gulf. The Panel notes that mines were laid by Iraq in the Persian Gulf, in particular in waters off Kuwait where a "minebelt" of approximately 1,200 mines was laid. 21/ Based on warnings issued to merchant shipping between 2 August 1990 and 2 March 1991, the Panel finds that there was a grave risk posed not only by the mine field itself but also by the drifting of mines which had broken free. The areas affected included the waters surrounding Iranian ports such as Kharg Island and Bandar-e-Bushehr, as well as Saudi Arabian ports. Accordingly, the Panel concludes that Iraq's laying of mines in the northern part of the Persian Gulf, defined as the waters above the 27th parallel from the Saudi Arabian coast to the western Iranian coast, constitutes military operations within the meaning of paragraph 21(a) of decision 7.

74. There were occasional reports of drifting mines sighted in southern parts of the Persian Gulf. However, the Panel finds that these, being sporadic events, are insufficient to constitute military operations.

(h) The Red Sea

75. Many claims assert losses arising from the disruption of operations in the Red Sea. The Panel notes that the Allied Coalition Forces deployed naval vessels in the Red Sea. Nevertheless, it finds that no actual military operations were conducted therein nor were any credible or serious threats of military action directed at such locations. The military vessels in the Red Sea including aircraft carriers, hospital ships, tankers and other supply ships, were used as "staging areas for supplies and personnel" to the Allied Coalition Forces. 22/ Some vessels were also involved in the inspection procedures required to enforce the trade embargo and were not participating in the actual military operations against Iraq. The Panel finds that losses arising from activities in the Red Sea are, therefore, not compensable.

(i) Other locations

76. Other locations in varying degrees of proximity to the theatre of military operations are cited in the claims presently under review. In particular, losses are alleged to have been sustained in Cyprus, Egypt,

Morocco, Tunisia and Turkey. The Panel has previously determined that there were no military operations or threats of military action in those locations sufficient to meet the requirement of directness. 23/

(j) Summary: Compensable areas and periods

77. The Panel determines, therefore, that the locations designated below are, for the periods specified, the compensable areas applicable to the claims in the present instalment. 24/ In its second report the Panel found that in some instances the full resumption of business operations was not likely to have taken place immediately upon the cessation of military operations and consequently, that compensation should, in some instances, be allowed for a recovery period extending beyond 2 March 1991. The Panel notes, however, that the transportation sector is one which is generally adaptable to changing circumstances. 25/ The Panel therefore considers that claimants were in a position to resume business at normal levels soon after cessation of military operations. Locations and periods not specified below are not compensable areas and periods for the purposes of this instalment.

Location	Period
Iraq	2 August 1990 - 2 March 1991
Kuwait	2 August 1990 - 2 March 1991 */
Saudi Arabia (within the range of Iraq's scud missiles)	2 August 1990 - 2 March 1991
Persian Gulf north of the 27th parallel	2 August 1990 - 2 March 1991
Israel	15 January - 2 March 1991
Jordanian airspace	15 January - 2 March 1991
Bahrain	22 February - 2 March 1991
Qatar	25 February - 2 March 1991

*/ In respect of cancelled air operations to Kuwait, the compensable period is 2 August 1990 to 22 April 1991. See paragraph 119 below.

2. Departure of persons from or their inability to leave Iraq or Kuwait

78. Paragraph 21(b) of decision 7 provides that losses arising from the "[d]eparture of persons from or their inability to leave Iraq or Kuwait (or a decision not to return)" between 2 August 1990 and 2 March 1991 are caused directly by the invasion and occupation of Kuwait. Of the losses

claimed in the present instalment, this provision is most pertinent to the question of evacuation costs.

79. The compensability of evacuation costs has been considered extensively by this and other Panels. Compensable evacuation costs have been interpreted by the "F1" Panel as comprising those "costs incurred for transport, accommodation, food and urgent medical treatment". "Ancillary costs", such as costs of telephone calls, room service and bar and laundry bills were found not to be compensable. 26/ The "E3" Panel has determined that only costs which were "temporary and extraordinary expenses" related to the repatriation of employees, and which would not have been incurred by a claimant in any event, for example, in repatriating foreign staff at the end of a contract, are compensable. 27/

80. Two particular questions are raised in this instalment. Firstly, many of the claims under consideration relate to evacuation operations conducted by transport claimants which were not restricted to employees of the claimants and their families; in many cases, those transport claimants undertook large-scale evacuations of nationals, at the request of or under the compulsion of, their governments. Secondly, some claimants effected evacuations from countries other than Iraq and Kuwait.

81. With regard to the first question, the Panel recalls the determinations contained in its first report that costs incurred by a claimant in assisting its employees to depart from Iraq or Kuwait between 2 August 1990 and 2 March 1991 are compensable to the extent proven by the claimant and to the extent that such costs are "evacuation costs" within the scope of the definition outlined in paragraph 79 above. 28/ The Panel found that such evacuation costs clearly lay within the scope of paragraph 21(b) of decision 7. The Panel finds that the costs incurred by claimants in evacuating non-employees are, similarly, a consequence of the departure of persons from Iraq and Kuwait and are, therefore, directly caused by the invasion. 29/

82. Concerning the second question, this Panel, in its second report, concurred with the findings of the "F1" Panel that evacuation costs from outside Iraq and Kuwait were compensable if "a direct link can be shown where 'actual military operations' or 'an actual - as opposed to speculative - threat of military action' existed against a country from which persons were evacuated". 30/ This Panel also agreed with the "F1" and "C" Panels in concluding that "a claim based upon an incident occurring outside Iraq or Kuwait needs to be more fully substantiated in order to establish the necessary causal link between the invasion and occupation of

Kuwait and the alleged loss". 31/ Applying this standard, the Panel determines that costs incurred in respect of evacuations from Saudi Arabia between 2 August and 2 March 1991 and from Israel between 15 January 1991 to 2 March 1991, are also, in principle, compensable.

83. In the present instalment, some claims relate to evacuation of individuals who had formerly been in Iraq, Kuwait, Israel or Saudi Arabia but who had, as a first stage of their evacuation, been transported to safer locations, such as Syria and Jordan, prior to repatriation. The Panel finds that stop-over costs incurred at locations outside the home country of the evacuee, which are part of the on-going evacuation journey from Iraq, Kuwait, Israel and from the compensable area of Saudi Arabia, and which are not a significant interruption in that journey, are compensable on the same basis as costs incurred to evacuate individuals directly from these locations. 32/

3. Other circumstances under paragraph 21 of Governing Council decision 7

84. Paragraph 21(c) of decision 7 provides that loss or damage resulting from the "[a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during [the period of 2 August 1990 and 2 March 1991] in connection with the invasion or occupation" is caused directly by the invasion and occupation of Kuwait.

85. The present instalment includes claims for loss or damage arising from the actions of Iraqi agents, for example, the seizure of vessels, the detention of employees and the theft of tangible property or cash in Kuwait and Iraq at the time of the invasion. If occurring during the relevant period, such losses clearly fall within the scope of paragraph 21(c).

86. The Panel notes that the direct link between the invasion and certain losses alleged in this instalment may also be established by reference to the events and circumstances described in paragraphs 21(d) and (e) of decision 7, namely, a breakdown of civil order and hostage-taking and other illegal detention. 33/ Iraq and Kuwait experienced such events between 2 August 1990 and 2 March 1991. Their potential consequences in the present instalment will be examined more fully in section IV below in connection with the compensability of particular losses.

B. Losses arising from increased costs of business operations and the impact of intervening acts

87. The issue of whether alleged losses for increased costs of business operations can be direct consequences of the invasion and occupation of Kuwait is not addressed specifically by any decision of the Governing Council, including decision 9, which deals with compensation for business losses. However, decision 9 does not purport to be exhaustive. The decision recognises that other types of losses may be eligible for compensation and provides that Commissioners may identify applicable principles. 34/

88. Four main types of increased costs are claimed in the present instalment. They relate to additional war risk insurance premiums, increased costs of fuel, costs of re-routing and additional staff costs.

1. Increase in charges for war risk insurance

89. The majority of claims for increased costs relate to war risk insurance premiums. After the invasion of Kuwait, underwriters, exercising the option that they had under standard war risk insurance clauses, declared certain locations to be destinations in respect of which additional premiums were payable if war risk insurance cover was to subsist (thereby generally defining what was known as an "additional premium area"). Additional premiums thus were levied in respect of shipping and airline transport operations to destinations in the Middle East which, in the underwriters' opinion, had become unsafe as a result of the invasion and occupation of Kuwait. While the compensability of war risk insurance premiums was briefly addressed in a specific context by the "F1" Panel in its third report, that Panel did not make a finding regarding the directness of such costs per se. 35/

90. There exists little international jurisprudence which specifically addresses the compensation of increased costs of war risk insurance. In the War-Risk Insurance Premiums claims 36/ and in the Eastern Steamship Lines, Inc. (United States) v. Germany, 37/ the United States/Germany Mixed Claims Commission held insurance premiums to be too remote to justify compensation. However, the liability of Germany under the Treaty of Berlin vis-à-vis claims of United States nationals was limited to "losses, damages, or injuries to them, ... suffered directly or indirectly during the war period, caused by acts of Germany or her agents in the prosecution of the war". 38/ This may be contrasted to the mandate of the present Commission, as established under resolution 687 (1991), which confirms

Iraq's liability for "any direct loss, damage,... as a result of Iraq's unlawful invasion and occupation of Kuwait". The liability of Iraq is not limited, as in the case of the United States/Germany Mixed Claims Commission, to losses resulting from the acts of Iraq or its agents, but covers all losses resulting directly from the invasion and occupation of Kuwait.

91. Paragraph 21 of decision 7 provides that losses resulting from the actual military operations or threat of military actions by either side are a direct result of the invasion and occupation of Kuwait. The Panel finds that additional premiums paid in respect of transport to, from and within locations that were subject to actual military operations or the threat of military action, as identified in section III(A) above, are compensable; and that they are so for the periods during which such operations or threat existed to the extent that such premiums were levied as a result of them. Insofar, however, as war risk insurance premiums covered risks other than military operations or the threat thereof, such as terrorist attacks, the Panel finds that part of the premiums do not result directly from Iraq's invasion and occupation of Kuwait and are, accordingly, not compensable.

92. The Panel must consider whether the decision of underwriters to impose additional premiums as regards certain destinations constituted an intervening act breaking the chain of causation. The Panel finds that such a decision, although an independent act, was a reasonably foreseeable consequence of the invasion and occupation of Kuwait as regards certain destinations and, to that extent, does not therefore break the chain of causation between the invasion and the loss suffered. 39/

93. Accordingly, the Panel finds that additional war risk insurance premiums were a direct result of the invasion and occupation of Kuwait and are, in principle, compensable as an increased cost of operations. 40/ This is subject to geographical and time limitations as set out at paragraph 77 above.

2. Increased costs of fuel

94. Many of the claims under review allege increased costs of fuel as a result of a substantial, world-wide increase in the price of crude oil following Iraq's invasion of Kuwait.

95. The Panel notes that there was, indeed, a significant rise in oil prices, beginning in August 1990. However, that increase soon abated, so that by January 1991, prices had almost reverted to their pre-invasion levels. 41/ It thus appears that the temporary hike was the effect of

market forces, presumably driven by the enforcement of the trade embargo and the expectation of oil shortages that in fact never materialized. This view is reflected in decision 15 of the Governing Council, citing the temporary increase in the price of oil as an example of the economic situation caused by the trade embargo, which is not to be accepted as a basis for compensation. 42/

96. Based on these findings, the Panel concludes that the increase in oil prices was not a direct consequence of the invasion and occupation of Kuwait and, therefore, that additional costs as a result thereof are not compensable.

3. Increased costs from re-routing

97. Most of the claims relating to re-routing are submitted in connection with the operations of airlines. Accordingly, the Panel's discussion on this issue will concentrate on the practice of the airline industry. 43/ As alleged by such airline claimants, the conflict necessitated the re-routing of flights to and from various destinations, such as Hong Kong or Singapore, which had formerly over-flown the Middle East. 44/

98. The Panel investigated the re-routing of airlines during the Gulf War through communications with officials of the International Civil Aviation Organisation ("ICAO") and IATA. The Panel considered documents delineating pre-war routes over the Middle East and the contingency routes for re-routing established by ICAO. In several communications, the Panel was also supplied with information by ICAO and IATA concerning industry practices as regards the re-routing of flights.

99. The Panel finds the cost of re-routing not compensable for the following reasons. The Panel's earlier findings define a theatre of air military operations as including the airspace of Iraq, Kuwait, part of Saudi Arabia, Israel and Jordan, an area significantly smaller than the area of re-routing. Re-routing is a common occurrence in air transport due to a number of events such as congestion of traffic and weather conditions. As such, re-routing is factored into the calculation of operating costs by civil carriers. The Panel, moreover, notes that the contingency routes defined by ICAO at the time continued to be used after the cease-fire. Those circumstances combined make it practically impossible to identify and assess re-routing costs, if any, which would have been directly caused by the invasion and occupation of Kuwait.

4. Additional staff costs

100. Many claimants, particularly in the shipping industry, allege that they incurred additional staff costs, in the form of overtime payments and bonus payments made as incentives to employees so as to enable claimants to continue their operations in the Middle East area during the hostilities. Certain of these payments were made pursuant to agreements concluded between shipowners' associations and seamen's unions. 45/ Others were made to crew in the absence of such agreements. The Panel finds that additional payments, where related to the compensable areas and periods, are directly caused by the invasion and occupation of Kuwait. Consequently, they are compensable to the extent that they were reasonable in amount.

C. Directness and decline in business

101. In the present instalment, decline in business claims are made by claimants based both within and outside the compensable area. In its second report, this Panel, dealing with claimants based within the compensable area, determined that compensation may be awarded "for profits which, in the ordinary course of events, [the claimant] would have been expected to earn and which were lost as a result of a decline in business directly caused by Iraq's invasion and occupation of Kuwait". 46/

102. The Panel determines that, where a claimant based outside the compensable area maintained a presence within that area by way of a branch, agency or other establishment, decline in business losses are compensable under the same conditions.

103. Where claimants based outside the compensable area and without a presence in the compensable area seek to recover in respect of a decline in business, the Panel finds that such claims are to be evaluated under paragraph 11 of Governing Council decision 9. The provision states:

> "Where a loss has been suffered relating to a transaction that has been part of a business practice or course of dealing, Iraq is liable according to the principles that apply to contract losses. No liability exists for losses related to transactions that were only expected to take place based on a previous course of dealing."

104. Paragraph 11, thus, recognises that Iraq may be liable for losses arising from a transaction that has been part of a business practice or course of dealing. The Panel notes, however, that the second sentence of paragraph 11 narrowly limits the scope of such compensability.

105. In particular, with respect to the claims under review, a claimant without a presence in the compensable area must satisfy a high evidentiary standard. The Panel finds that a decline in business claim is compensable under paragraph 11 where the claimant shows that there was a regular course of dealing with another party, demonstrating that the claimant had a well-founded expectation of further business dealings of the same character with the same party under readily ascertainable terms and, in addition, that a consistent level of income and profitability had been realized from such dealings. A mere showing of past earnings from operations to locations in the compensable area will be insufficient to establish a course of dealing giving rise to compensable losses.

D. The jurisdiction of the Commission and Iraqi private parties

106. In the present instalment, claims are submitted in respect of losses relating to contracts with Iraqi private parties. The Panel must consider whether (a) the criteria under paragraph 8 of Governing Council decision 9, which deals with the compensability of losses arising from "contracts with Iraq"; 47/ and, (b) the exclusion in paragraph 16 of Security Council resolution 687 (1991) of the Commission's jurisdiction over debts and obligations of Iraq arising prior to the invasion of Kuwait apply equally to Iraqi private parties as to governmental entities.

107. In its first report, the Panel defined "Iraq" for the purposes of paragraph 8 of decision 9 as being the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity controlled by the Government of Iraq. The Panel notes, however, that the five contracts under review in that instalment were limited to contracts with Iraqi governmental entities and that the Panel's definition was based on the facts before it in those claims. 49/

108. As regards paragraph 16 of resolution 687 (1991), by virtue of which debts or obligations of Iraq arising prior to the invasion are to be addressed not through the Commission but through the normal mechanisms, the Panel noted, in its first report, that "the most widely-shared international definitions of the phrase 'foreign debt' includes any debt incurred both by the State (public debt) and its residents (private debt)". 50/ The circumstances underlying the Panel's interpretation of the "arising prior to" exclusion in that report apply to both Iraqi public and private parties. Iraq's foreign debt would distort payment terms and practices under contracts with Iraqi private parties as well as those with public entities. The Panel notes that foreign exchange, upon the availability of which private parties depended to settle their debts,

remained at all relevant times under the control of the Iraqi Government. The Panel finds, therefore, that there is no basis to distinguish between Iraqi private and public parties for the purposes of the Commission's jurisdiction over debts and obligations arising prior to 2 August 1990. 51/ For the reasons outlined above, the Panel considers that paragraph 8 of decision 9 applies equally to private Iraqi parties as well as to Iraqi Government entities.

E. Effects of the trade embargo and related measures

109. Under Governing Council decisions 7, 9 and 15, losses that are solely attributable to the trade embargo and related measures, or the economic situation caused thereby, are not compensable. 52/ These Governing Council decisions, nevertheless, permit compensation to be awarded when the invasion and occupation are a separate and distinct cause of the loss notwithstanding the existence of the trade embargo; 53/ and where the invasion and occupation and the trade embargo are found to be parallel causes of the loss. 54/

110. The trade embargo applied to transport operations relating to the carriage of commodities or products to Iraq and Kuwait. The issue now presented to the Panel is whether the trade embargo was the sole cause of the cancellation, diversion and delay of transportation operations to and from the Middle East, particularly with regard to operations in connection with Iraq or Kuwait.

111. In the present instalment, claims are submitted in respect of transport operations for the carriage of commodities or products which were intended to be brought to or removed from Iraq or Kuwait on or after 6 August 1990. Such operations were subject to the provisions of the trade embargo. The Panel finds that the losses resulting in connection therewith are not compensable if caused solely by the embargo or the inspection procedures. 55/ If, however, the invasion and occupation of Kuwait constitutes an independent cause or a parallel cause of such losses, these losses are compensable.

112. With respect to transport operations to Iraq under review, the Panel determines that losses in connection with such operations arising after 2 March 1991 were not directly caused by the invasion and occupation of Kuwait.

F. Mitigation of losses

113. The Governing Council has established that claimants before the Commission had a duty to mitigate their losses. 56/ Certain claimants allege that they reduced losses arising from the disruption of transport services which resulted from the invasion and occupation of Kuwait. For example, some airline and shipping claimants state that they passed on a portion of their increased costs for fuel and insurance by increasing fares for passenger and freight services. Similarly, some ship owners state that they passed on some of their additional costs for, inter alia, war bonus payments and insurance, to shippers by means of revised fees payable under charter parties.

114. This Panel, in its first report, gave consideration to the scope of the duty to mitigate in the context of claims for tangible property losses. It found, first, that the duty to mitigate only requires the claimant to do what was reasonable under the circumstances and no more; but also that when a loss could reasonably have been avoided, any award of compensation must be reduced as described in section V below, to the extent that the claimant did not take such reasonable steps. 57/

115. The Panel must also consider the compensability of costs incurred by a claimant in taking steps in mitigation. A few claimants assert that they incurred such costs, for example, in relocating their fleets to airports outside the compensable area, in modifying their operations or in undertaking promotional activities to rebuild their businesses. In its first report, the Panel determined that costs incurred in respect of steps taken in mitigation are compensable "[i]f it is found that such steps were undertaken in good faith and were reasonable in cost". 58/ The "E3" Panel, in its second report, made the finding that "costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided". 59/ The Panel finds, in keeping with these earlier determinations, that costs incurred by a claimant in taking steps in mitigation of compensable losses are recoverable insofar as such costs were reasonable in nature and amount.

116. Having regard to the high fixed costs of the transportation industry, the Panel considers that continuation of operations, even at a loss, may constitute reasonable steps taken in mitigation, further justifying compensation for a resulting decline in revenues. The Panel shall consider the reasonableness of the particular steps taken or not taken by claimants

in mitigation in the context of the compensability of individual losses in section IV below.

IV. COMPENSABILITY OF THE LOSSES CLAIMED

117. The Panel notes that the claims in this instalment raise a wide variety of loss types and that the claimants have presented similar losses in different ways. To allow consistency in the analysis of the claims, the Panel has re-categorized certain of the losses using the following classifications. Among the many claims for loss of profits, the Panel has distinguished those stemming from cancelled operations, decline in business and increased costs of operations respectively. The Panel has also considered contract-related losses, evacuation costs, tangible property losses, losses relating to premises and losses relating to bank balances in Kuwait and Iraq. Those losses which do not fall within this classification were grouped, and are considered in a final sub-section.

A. Cancelled operations

118. Several claimants allege loss of revenue in connection with scheduled transport operations that were entirely cancelled. The compensability of such claims is analysed with regard to the various locations involved.

1. Iraq and Kuwait

119. As previously determined by the Panel, and as reiterated at paragraph 60 above, there were military operations and a threat of military action in Iraq and Kuwait from 2 August 1990 to 2 March 1991. As regards airline operations to Kuwait, the Panel notes that regular operations of foreign airlines did not resume until 22 April 1991, which warrants an extension of the compensable period to that date for losses relating to such operations. 60/

120. Although the trade embargo may have contributed to the cancellation of transport operations, the Panel finds that during the periods defined in the previous paragraph, it was merely a parallel cause to military events and, thus, does not preclude recovery of ensuing losses before this Commission.

121. Consequently, the Panel decides that the loss of revenue from cancelled air transport operations to Kuwait between 2 August 1990 and 22 April 1991, as well as from cancelled shipping and road operations to Kuwait between 2 August 1990 and 2 March 1991, are compensable. All cancelled air, shipping and road transport operations to Iraq between 2 August 1990 and 2 March 1991 are compensable.

2. Saudi Arabia

122. With regard to Saudi Arabia, the Panel finds that losses arising from cancellation of transport operations to, from and within locations within the range of scud missiles used by Iraq between 2 August 1990 and 2 March 1991 are, in principle, compensable. As stated in section III(A)(1)(b) above, losses sustained in locations with respect to Saudi Arabia which lay outside the range of scud missiles are not compensable.

3. Israel

123. The Panel reiterates its finding in its second report, described at paragraph 64 above, that the threat of military action and the actual military operations directed at Israel were intimately connected to Iraq's invasion and occupation of Kuwait, so that losses resulting from such threat or operations are compensable. 61/ The Panel finds that losses resulting from the cancellation of all transport operations to, from and within Israel come under this previous holding and are compensable, in principle, if suffered during the period from 15 January to 2 March 1991.

4. Jordan

124. A number of transport claimants allege losses resulting from cancellation of operations to, from and within Jordan. As explained at paragraph 68 above, the Panel finds that the land territory of Jordan and its waters were not the subject of military operations or the threat of military action. Accordingly, the Panel concludes that losses claimed in the present instalment relating to the cancellation of shipping transport operations to and from Jordan, and road transport operations to, from and within Jordan, are not compensable.

125. As also stated in paragraph 66 above, there was a threat of military operations and subsequent actual military operations in the airspace of Jordan between 15 January and 2 March 1991. Accordingly, the Panel finds that losses to airline claimants directly caused by military operations or the threat thereof between the stated dates are, in principle, compensable.

5. Bahrain and Qatar

126. It follows from the findings laid out at paragraph 70 above, that losses specifically shown to have resulted from scud missile strikes on Bahrain on 22 February 1991, and on Qatar on the night of 25 February 1991, and from the possibility of further attacks, are compensable from the

respective dates until 2 March 1991. The Panel concludes, therefore, that losses from cancelled operations to Bahrain and Qatar under those conditions are, in principle, compensable.

6. Other destinations

127. Airline claimants allege losses in connection with the cancellation of operations to and from, inter alia, Cyprus, Egypt, Syria, Turkey and the United Arab Emirates. Shipping claimants allege losses in connection with operations to ports located in the southern part of the Persian Gulf, the Suez Canal and the Red Sea. Road transport companies allege losses in connection with cancelled operations to and from, inter alia, Egypt, Turkey and Tunisia.

128. The Panel finds that if a claimant cannot show that the cancellation of a transport operation was in connection with a location within the compensable area as summarised in paragraph 77, losses resulting from such cancellation are not compensable.

B. Decline in business

129. Many of the claims in the present instalment assert a general decline in business in respect of operations conducted world-wide, as well as to, from, and within the Middle East. The Panel distinguishes between those claimants with a presence, such as a branch, agency or other establishment, in the compensable area, and those claimants who did not maintain such a presence. While the former's losses are normally compensable in accordance with the principles enunciated by the Panel in its second report, 62/ the latter's losses will be subject to greater scrutiny. 63/ The Panel now considers these two situations in turn.

1. Claimants maintaining a presence within the compensable area

(a) Airline claimants

130. Given the on-going military operations and threat thereof, the Panel finds that it was reasonable, particularly in view of the paramount safety considerations of the airline industry, for claimants with a presence in the compensable area to have reduced operations to and from available airports within that area. Accordingly, the Panel finds that losses resulting from such reduction of operations are compensable. To the extent that the losses claimed for decline in business relate to operations outside the compensable area, or result from causes not directly

attributable to the invasion (such as fear of terrorism), such losses are not compensable.

(b) Shipping claimants

131. The Panel finds that losses of shipping claimants with a presence in the compensable area resulting from a decline in business are, in principle, compensable. However, with regard to shipping operations to Qatar and Bahrain, the Panel finds that the military operations, in light of their brevity, as found in paragraph 70, did not cause a measurable decline in business.

(c) Road claimants

132. With regard to road transportation claimants having a presence in the compensable area, the Panel determines that decline in business in relation to operations to, from and within the compensable area are, in principle, compensable.

2. Claimants without a presence in the compensable area

(a) Airline claimants

133. Airline claimants who did not maintain a presence in the compensable area but who conducted scheduled operations to the compensable area may be able to meet the evidentiary standard set out in paragraph 105 above. To the extent that a claimant can meet these criteria in respect of operations to and from the compensable area, the Panel finds that losses arising from a decline in business in respect of such operations are compensable.

(b) Shipping claimants

134. With regard to shipping, the Panel distinguishes between liner and charter services. Where a claimant does not have a presence in the compensable area but is engaged in the liner trade (scheduled services), the evidentiary standard described in paragraph 105 shall be applied to its claim for decline in business.

135. In contrast, where a shipping claimant provides charter (non-scheduled) services, the Panel notes that each charter will be negotiated individually at the prevailing market rate and that there is no commitment on the part of the shipowner nor on the charterer to renew such charters in the future. Accordingly, the Panel, having regard to the exclusion in

paragraph 11 of decision 9 of compensation for a mere expectation, determines that such a claimant must make a specific showing that it was engaged in a business practice or course of dealing of a nature as described in paragraph 105 to be eligible for compensation.

136. A claimant may be able to satisfy the criteria under paragraph 11 and show that it had a well-founded expectation of future business if, for example, it was engaged in a lengthy time-charter or in a contract of affreightment covering several voyages to the compensable area. However, the Panel finds that, even if the claimant can point to such a time-charter or contract of affreightment, it will still have to meet the evidentiary standard described in paragraph 105 above.

137. Where a claimant does not have a presence in the compensable area, nor conducts operations in that area, but rather relies on the business activities of others there, the Panel finds that the losses alleged in such claims are not a direct result of the invasion and occupation of Kuwait. Such is the case, for example, of an Egyptian shipping company which relied upon the supply of goods from companies within the compensable area for its business operations within Egypt. A further example is that of a shipping agent in Europe whose business with a ship-owner based in the compensable area suffered a decline. 64/

(c) Road claimants

138. Many road transportation claimants engaged in operations similar to those of shipowners under charter-parties, in that their operations were not usually scheduled but were based on individual transactions. Accordingly, the Panel finds that, in order to establish the compensability of losses resulting from a decline in business, such claimants are required to meet the evidentiary standard described in paragraph 105 above.

C. Increased costs of operations

139. As discussed in section III above, claims for increased costs of operations relate mainly to additional war risk insurance premiums, increased fuel expenses, re-routing and additional staff costs. The Panel has already found that additional war risk insurance and additional staff costs may be directly caused by the invasion and occupation of Kuwait. It now applies those findings to the particular claims presented.

140. Based on the findings regarding the compensable area and period, claims for costs of additional war risk insurance premiums and additional

staff costs incurred in respect of transport operations to Iraq, Kuwait, Israel, Qatar and Bahrain during the periods specified in section III above are compensable. Similarly, additional premiums and staff costs paid in respect of operations to, from or through the Persian Gulf north of the 27th parallel and locations in Saudi Arabia within the range of Iraq's scud missiles, and air transport operations to and from Jordan, during the relevant periods, are compensable. Claims for additional premiums and staff costs incurred in respect of operations outside the compensable area or period are not compensable. 65/ Likewise not compensable are costs, increased or even ordinary, incurred in connection with operations of the Allied Coalition forces which themselves are not eligible for compensation pursuant to Governing Council decision 19. 66/

141. As regards eligible insurance costs, however, the Panel further finds that, to the extent that such additional costs were imposed specifically for risks other than those directly posed by the invasion and occupation of Kuwait, for example, in respect of acts of terrorism, these costs are not compensable because they do not result directly from the invasion and occupation of Kuwait. This will be taken into account in the valuation of the eligible claims.

142. In respect of mitigation, the Panel finds that, given the competitive environment of the transportation industries and the magnitude of their fixed costs of operations, market forces would normally be sufficient to have led the claimants to undertake the appropriate level of mitigation. Indeed, the continuation of activities, albeit at a loss, may be regarded as a step taken in mitigation. For similar reasons, the Panel finds that it was not unreasonable for claimants to undertake non-scheduled operations after 2 August 1990 to the compensable area.

143. Two airlines, based in Israel and Jordan respectively, assert that they had to relocate their fleets outside of the Middle East during the hostilities because of the risks of damage to their aircraft and the high price of additional war risk insurance premiums. This relocation is stated to have increased the costs of their operations. Given the amount of premiums required for war risk insurance at the original locations, the Panel finds that such additional relocation expenses qualify as mitigation costs. Consequently, they are compensable to the extent that they are reasonable and were incurred during the compensable period.

144. Claims have been submitted in respect of support services provided to employees detained by Iraqi authorities, and their families, as well as counselling and other medical treatment provided to such employees after

their release and repatriation. Such services include establishing and maintaining crisis centres, communication with families of detained staff members, and provision of holidays and other benefits to such staff upon their release. In addition, several claims seek compensation in respect of payments for mental suffering experienced by employees detained by Iraqi soldiers in Kuwait and Iraq and, in one case, allegedly resulting from the conduct of inspections by Allied Coalition Forces to ensure compliance with the trade embargo.

145. In keeping with the findings of other Panels, this Panel finds that a claim for costs incurred in facilitating communication between detainees and members of their family is compensable to the extent that such costs were reasonable in the circumstances. 67/ Expenses such as relating to the establishment and operation of crisis centres or psychologists' fees for those persons, are similarly compensable. 68/ If, however, the event giving rise to the expenses was solely related to the trade embargo or measures in implementation thereof, such as the inspection of ships's cargo, such expenses are not compensable.

146. With regard to the provision of support to family members of detainees, the Panel adopts the findings respectively made by the "E1" and "F1" Panels that such costs are compensable to the extent that they would not have been incurred in any event, were prompted by humanitarian considerations and were reasonable in amount. 69/ The Panel finds that discretionary expenses, such as payments for family holidays following the release of detainees, are not compensable.

147. One claimant seeks to recover the costs of providing gas masks to members of its staff located in Saudi Arabia. The Panel, recalling its determinations in section III above, finds that, if the staff were located in an area of Saudi Arabia subject to the threat of military action or actual military operations between 2 August 1990 and 2 March 1991, such costs are compensable.

148. One claimant seeks to recover sums paid in interest on a debt in Egypt between August 1990 and June 1991, stating that the interest would not have been payable if the invasion had not caused the postponement of a sale of an aircraft to a buyer unable to take delivery, thereby depriving the claimant of needed foreign currency. Another claimant, based in Israel, claims a sum paid as a "risk fee" that was added to interest payable on a loan between January 1991 and March 1991. The Panel has previously determined that losses resulting from the general economic consequences to a claimant of Iraq's invasion and occupation of Kuwait,

rather than the acts of the invasion and occupation themselves, are not direct losses. 70/ The Panel finds that the losses in question are in the nature of such general economic consequences. Accordingly, these losses are not compensable.

149. Claims are also made for promotional costs incurred after the cessation of hostilities by airline claimants who assert that such costs were necessary to rebuild business lost as a consequence of the invasion and occupation of Kuwait. Such costs have been claimed in respect of, for example, attendance at trade fairs, promotional trips for tour operators, journalists and travel agents, and advertising. The Panel finds that it has not been demonstrated that such promotional activities were a necessary consequence of the invasion and occupation of Kuwait, nor that they would not have been undertaken in the ordinary course of business. Such costs are, accordingly, not compensable.

D. Contract-related losses

1. Compensability in general

(a) Contracts with Iraqi parties

150. Several of the claims in this instalment allege contract-related losses involving Iraqi parties. Most such claims concern non-payment for services rendered under interline agreements or agency agreements. Other claims, particularly those submitted by road transportation claimants, rest on the inability of the claimants to perform transportation contracts because of the conditions in Iraq and Kuwait.

151. The Panel has previously considered the compensbility of claims based on contracts with Iraq, which are alleged to have been breached or rendered impossible to perform. Debts and obligations of Iraq arising prior to 2 August 1990 are outside the jurisdiction of the Commission, pursuant to Security Council resolution 687 (1990). 71/ As regards claims within the jurisdiction of the Commission, the Panel regards such claims to be compensable as provided for in paragraphs 8 and 9 of decision 9 and as interpreted previously. 72/

152. One claim in this instalment concerns the non-payment of sums due from a private sales agent in Iraq. As explained in paragraph 108, claims for contract-related losses with private Iraqi parties shall be assessed in accordance with the Panel's findings concerning the compensability of contract-related losses with Iraqi public entities.

(b) Contracts with non-Iraqi parties

153. Claims are also submitted in relation to contracts with non-Iraqi parties in Kuwait, Jordan, Israel, Egypt and other locations. They include agency agreements and contracts for the provision of transport-related services, such as catering, maintenance and training contracts.

154. The Panel refers to its conclusion in its second report that, unlike the situation of contracts with Iraq, such losses are compensable only if the claimant has provided specific proof that the other party's failure to perform was the direct result of Iraq's invasion and occupation of Kuwait and not its independent decision. 73/

155. The Panel also recalls its determination in its first and second reports regarding claims for contractual debts that are alleged to have not been paid because of the invasion and occupation of Kuwait. Adequate proof that a contracting party's inability to perform resulted from the invasion and occupation of Kuwait consists of a showing that performance was no longer possible, for example, because the contracting party, in the case of an individual, was killed or physically impaired, or in the case of a business, ceased to exist or was rendered bankrupt or insolvent, as a result of Iraq's invasion and occupation of Kuwait. 74/

2. Compensability of specific types of contract-related losses

(a) Advance rental payments

156. Some claims are submitted in respect of advance rental payments made for premises in Iraq and Kuwait. They seek compensation because of the inability to use the premises during the hostilities. Others also claim for inability to use premises, particularly in Iraq, after the cease-fire on 2 March 1991.

157. In its first report, the Panel determined that losses arising from advance rental payments were compensable if the claimant's "inability to receive the benefit of the amounts paid in rent during the relevant period was the direct result of Iraq's invasion and occupation" of Kuwait. 75/

158. Having considered the range of views held by various panels, including this one regarding the compensability of advance rental payments, the Panel agrees with the proposition that advance rental payments in the case of businesses are best considered within a loss of profits claim. This is most clear where the rental property is dedicated, for example, to

a particular construction project. In such circumstances, where the claimant has also submitted a claim for loss of profits, the Panel has evaluated the claim for advance rental payments as part of the claim for loss of profits, as described in paragraphs 187 et seq below. However, in some instances, it is not feasible because of the manner in which the claim is presented (for example, the claimant has not also submitted a claim for loss of profits) or appropriate given the broad scope of the claimant's business (for example, a global airline), to value a claim for advance rental payments as an element of a loss of profits claim. In such instances, it is the view of the Panel that the advance payment of rent created an entitlement to the use of an asset and that the denial of that use is compensable. The measure of compensation in such cases is not in terms of the asset's contribution to the overall profitability of the business, but rather in terms of the value that could be expected if it, for example, were leased. When the property is amenable to alternate use, the best measure of value, absent any contrary indication in the record, is the rent paid by the claimant itself. Property intimately tied to a particular business may not be amenable to such alternate use. In such a case, the rent would constitute what other Panels have termed a "sunk cost". 76/

159. As regards claims for rental payments for premises in Iraq or Kuwait for the period after 2 March 1991, the Panel finds that the inability of the claimant to benefit from those payments did not result directly from the invasion and occupation of Kuwait.

(b) Expenses relating to staff

160. Many claims are submitted in respect of salaries paid to staff based in Iraq, Kuwait, and other locations for periods during which the staff could not work either because of disruption of business activities or, in some instances, detention of individual employees by Iraq ("unproductive salaries"). Claims have also been submitted for severance payments made to staff, particularly to staff of offices located in Kuwait and Iraq, which could not continue operations.

161. The Panel, pursuant to the determinations contained in its first report, concludes that unproductive salary payments are compensable to the extent that they were made in respect of staff based in the compensable area during the compensable period, and that the non-productivity was a direct result of the invasion and occupation of Kuwait. 77/ As for salary payments to such staff after evacuation, the Panel finds that these costs are only compensable where the record shows that the employee could not be

reassigned to other productive tasks. In those cases where the claimant terminated employment rather than continue unproductive salary payments, the contractually or legally required payments for early termination are compensable. 78/

162. Similarly, claims for payments made for personal property lost by employees or their families because of their enforced departure from Kuwait or Iraq, where such payments were made pursuant to legal obligations or otherwise appear justified and reasonable under the circumstances, are in principle compensable. 79/

E. Evacuation costs

163. The Panel has considered the scope of compensable evacuation costs under section III above, and now applies the determinations made therein to the claims before it.

164. The Panel finds that costs of evacuation from Iraq and Kuwait incurred by claimants engaged in the airline and shipping industries in respect of non-employees are compensable on the same basis as for employees. Accordingly, such evacuation costs are compensable to the extent proven by the claimant if incurred during the period 2 August 1990 to 2 March 1991.

165. With regard to evacuations from locations outside Iraq and Kuwait, the Panel concludes that such costs are compensable where the evacuations were effected from the compensable area. Costs for evacuation from Jordan, Iran, Turkey and Syria, as claimed in this instalment, are not compensable insofar as they do not constitute part of an on-going journey of evacuation from a location in the compensable area. 80/

F. Tangible property losses in Iraq or Kuwait

166. Claimants seek to recover for the value of tangible property lost from premises in Iraq and Kuwait. In particular, claims are submitted in respect of shipping containers located in ports in Kuwait and Iraq at the time of the invasion which were lost or damaged. Other claims relate to items such as furniture, vehicles and office equipment.

167. Consistent with its determinations in its first report, 81/ the Panel finds that the loss of tangible property from premises in Iraq and Kuwait are "direct losses" if the claimant has demonstrated that the assets were in those locations as of 2 August 1990, and that such assets were lost or

destroyed during the invasion and occupation of Kuwait ending on 2 March 1991.

G. Repairs and renovations to premises in Kuwait

168. Claims relating to real property in the present instalment are for the cost of repairs to damaged premises located in Kuwait. The Panel has previously determined that such costs are compensable because "even though such costs were incurred following the liberation of Kuwait, they were a widespread consequence of the destruction inflicted on the landscape of Kuwait in the course and immediate aftermath of Iraq's invasion and occupation." 82/

H. Bank balances

169. With respect to claims for funds held in bank accounts in Iraq, the Panel recalls its determination in its first report that such claims are compensable if the claimant had the right to transfer them outside Iraq. If, by the terms of the account, the funds were not exchangeable for foreign currency, as one claimant acknowledges, a claim for such funds is not compensable. 83/ In the case of foreign airlines, it appears from the evidence that the funds held were transferable albeit subject to prior authorisation from Iraqi authorities which, in some instances, was not easily forthcoming. The Panel also recognises that claimants would have applied some funds to meet local expenses, such as salaries of local employees and other office expenses in Iraq. Accordingly, the Panel finds that the balance of accounts held by the airlines is compensable but for a portion of the funds that would have been locally used and is still available to the claimants, as acknowledged by Iraq.

170. Regarding funds held in bank accounts in Kuwait, the Panel adopts the determinations of other panels that such funds are not compensable unless the claimant has complied with the requirements of the Central Bank of Kuwait, is still denied access to the funds and can show that the denial of access was directly caused by the invasion. 84/

I. Other losses

171. A claimant seeks to recover for a loss allegedly sustained in Jordan as a result of being compelled to sell an aircraft at a loss in order to meet its operating costs. Another claimant seeks to recover an alleged loss sustained in respect of funds which it maintained in Iraq, because of the depreciation of the Iraqi dinar.

172. The Panel finds that these losses were due to the chaotic economic situation following the invasion and occupation of Kuwait. Accordingly, the Panel finds that these losses are not a direct result of the invasion and occupation of Kuwait and are not compensable.

173. A claim is submitted for loss of prestige and goodwill that, the claimant alleges, resulted from the disruption of its transport operations by the invasion and occupation of Kuwait. The Panel finds that the claimant has failed to substantiate the alleged losses and, accordingly, the Panel need not consider the compensability in principle of this loss.

V. VERIFICATION AND VALUATION OF THE COMPENSABLE CLAIMS

174. Having determined which claims are compensable, the Panel now addresses considerations relevant to the ascertainment of the appropriate compensation, if any, to be awarded for each eligible claim. These considerations involve the procedures used to verify the claims and the methodology used to value the amount of compensation to be awarded.

A. Verification procedures

175. Article 35, paragraph 3 of the Rules states that claims by corporations and other legal entities "must be supported by documentary and other appropriate evidence sufficient to demonst ate the circumstances and amount of the claimed loss". It is the responsibility of the Panel under article 35, paragraph 1, to determine "the admissibility, relevance, materiality and weight of any documents and other evidence submitted".

176. The Panel used a number of means to verify the losses claimed and to determine the appropriate amount of compensation. Given the complexity of the valuation issues, the large number of claims under review and the volume of supporting documentation underlying the claims, at an early stage of the proceedings the Panel sought expert advice pursuant to article 36 of the Rules. This advice was provided by accountants within the secretariat and accounting consultants.

177. Under the Panel's supervision and guidance, the accountants reviewed the documents and other information submitted by the claimants in response to the article 34 notifications described in section II above. To the extent applicable, generally accepted accountancy procedures were used in verifying and valuing the losses.

178. The Panel provided specific instructions to the accounting consultants with respect to the area and time period for which a loss sustained by the claimants would, in principle, be compensable. In order to ensure consistency in the treatment of the many claimants, the Panel also instructed that adjustment factors be used in evaluating the weight and sufficiency of the evidence presented in support of the value of the claims.

179. The Panel carefully reviewed the calculations and recommendations of the accountants with regard to each claim, adopting or revising them, as appropriate, in order to reach a decision in each case.

B. Valuation method

1. General considerations

(a) Standard review programmes

180. In order to evaluate all claims in a consistent manner, the types of losses in every claim were identified during the article 34 review process outlined in section II. Standard review programmes were developed with respect to each of the loss types identified, and were then applied in evaluating the claims. The standard review programmes delineated the successive steps that the accountants were to take in evaluating and valuing the claims. The programmes included a series of questions structured for each loss type. The responses to the questions, as derived from the claim files, guided the accountants in the verification and valuation of the claims. That procedure permitted the Panel to assess whether the accountants had properly applied its findings and gauged the weight and sufficiency of the evidence submitted by claimants (see paragraph 182).

(b) Avoidance of double compensation

181. Where a claim has been found to be compensable in this instalment and the same loss has been awarded in another claim, the amount of compensation awarded in the other claim has been deducted from the compensation calculated for the claim in this instalment. 85/ Where another claim for the same loss is pending before the Commission, the relevant information has been provided to the Panel reviewing the other claim so that the same loss is not compensated twice.

(c) Adjustment for evidentiary deficiencies

182. The type and quality of evidence submitted by the claimants varied significantly. Taking into account information obtained from the accountants as to the level and type of evidence which claimants in the industries in question usually are able to produce, the Panel established guidelines setting adjustment factors to be applied to the loss calculated by the method set out above. The guidelines were based upon, among other things, whether particular documentation, alone or together with other information, was considered sufficient evidence of the alleged value of a particular loss. These adjustment factors were applied to calculate the final recommended amount.

2. Specific types of claims

(a) Cancelled operations, decline in business and increased costs of operations

(i) Valuation of cancelled operations, decline in business and increased costs of operations on the basis of general accounts

183. A large number of claimants in this instalment seek compensation for losses said to arise as a result of increased costs of operations, a decline in business or cancelled operations. As stated in section IV, these three types of losses are compensable in principle. The following paragraphs describe the methods of valuation employed by the Panel where the claimant has used general accounts to support its claim.

184. In many instances, the invasion and occupation of Kuwait by Iraq only affected one stream of business activity of a multinational operation. However, financial data provided by the claimant frequently reflected its revenue and costs as a whole, thus encompassing more activity than that related to the claim. As importantly, such accounts also reflected costs that the Panel has determined to be not compensable (e.g. increased cost of fuel), as well as operating costs associated with operations outside the compensable area or period. This problem was particularly faced by the Panel when valuing the cancelled operations, decline in business and increased costs claims of air transport claimants.

185. Accordingly the Panel adopted a specific method of measuring the decline in revenue and increase in compensable costs of operations that the claimant experienced during the compensable period. That method is similar to a loss of profits analysis in that it projects revenue and costs, but departs from that approach in focusing not on lost profits as a whole but on the differences between (1) projected and actual revenue, and between (2) projected and actual costs. These two differences are then adjusted as appropriate to correct the distortions described in paragraphs 190 and 191. More specifically, the method involves the following steps.

186. Step one: Projection of revenue. A projection was made of revenue on the basis of historical data provided by the claimant. This was usually based on the audited accounts. The actual revenue reported for the compensable period was then deducted from the projected revenue to arrive at the decline in revenue for the compensable period.

187. Step two: Adjustment of decline in revenue. The Panel adjusted the amount calculated in step one so that it reflected that portion of the business attributable to operations in the compensable area. If instead of a decrease in revenue, an increase, as adjusted, was found to have occurred, no award of compensation was recommended for decline in revenue.

188. Step three: Projection of costs. A projection was made of the costs that would have been expected to be incurred during the compensable period on the basis of historical data provided by the claimant. This was usually based on the audited accounts. The projected cost was then deducted from the actual costs reported for the compensable period to arrive at the increased costs for the compensable period.

189. Step four: Adjustment of increase in costs of operation. The Panel adjusted the amount calculated in step three so that it related only to that portion of the business attributable to operations in the compensable area and to those increased costs that the Panel determined in section III(B) to be compensable. If a decrease in costs, as adjusted, was found to have occurred, then no award of compensation was recommended unless an amount was indicated in accordance with paragraph 197.

190. In determining the level of adjustments to be made, the Panel was mindful of the distinction in the operations of regional and global airlines, as an airline based in the Middle East had a greater exposure to the effects of the invasion and occupation of Kuwait than an airline that was based outside the Middle East.

191. The Panel also recognised that the adjustments made to the revenue and cost elements would not necessarily be the same, as there are instances where a claimant may, by the nature of the costs, have to incur costs to purchase a benefit far greater than that which the claimant will use or, which is compensable. An example would be the purchase of additional war risk insurance which provides cover for non-compensable loss categories or for a geographical region (e.g., the Middle East) larger than the compensable area. In such instances, the Panel apportioned the claimant's costs, both to exclude cover for non-compensable losses (such as terrorism risks) and for areas or time periods, or both, that were broader than those found to be compensable by the Panel.

(ii) Valuation of increased costs of operations on the basis of specific invoices

192. Where a claim for increased costs of operations was supported by specific invoices, a review of the claim was initially conducted to disallow costs which fall into categories such as fuel costs, determined by the Panel to be non-compensable. Of the costs, which are compensable in principle, any cost which would have been incurred in the normal course of business, such as regular insurance cover, was also deducted.

193. The remaining costs were then adjusted to remove costs which were incurred for time periods falling outside the compensable period. The same was done for costs which related to geographical areas outside the compensable area. Where the claimant provided the necessary information or the nature of the evidence was sufficiently detailed, costs were specifically identified as being within or outside the compensable period or area. Wherever the information provided by the claimant was not adequate for such identification but still demonstrated that the claimant entered the compensable area during the compensable period, the Panel directed that the costs be apportioned between compensable and non-compensable periods or areas.

194. To this end, in determining what amounts were incurred for the compensable period, time apportionment was used. In determining the amounts that were incurred for the compensable area, a geographical basis was used. The Panel then applied a ratio of the two numbers to apportion the insurance premiums to arrive at the compensable loss.

195. Having determined what remaining costs were compensable, the Panel considered the possibility of mitigation, applying the criteria spelled out above.

(iii) Increased cost of operations: reconciliation of valuation under general accounts and specific invoices

196. The Panel has been cognisant of the fact that the presentation of a given claim might entail a risk of double compensation. This is particularly true in relation to claims for lost profits and for increased costs of operations. In some instances, claimants sought only to recover increased costs. In other instances, the claim contains both a claim for lost profits and one for increased costs of operations, with varying degrees of overlap between the two.

197. The Panel has valued the increased cost of operations claims in accordance with the methods described above. Where the Panel has valued a claim for increased costs on the basis of both general accounts and specific invoices, the Panel has recommended for award, the higher of the two.

(b) Contract and contract-related losses

198. For claims where the continuation of a contract had allegedly become impossible, the existence of the contractual relationship was first ascertained. The Panel then verified that the contract could not be performed by the claimant or, where the claimant had performed, that it had not received payment as required under the contract. The Panel thereafter determined whether the inability to perform the contract, or the non-payment, was a direct result of Iraq's invasion and occupation of Kuwait.

199. The eligible claims were valued by determining what a claimant could have expected to earn under the terms of the contract had its continuation not been rendered impossible, deducting the cost savings brought about by the interruption. The claim was also adjusted for any mitigation that the claimant could reasonably have been expected to undertake. Where applicable, the expected revenue under the contract was apportioned over the period during which it would have been earned under the contract: only amounts that fell due within the compensable period have been recommended for award.

(c) Evacuation costs

200. Claims for costs of evacuation were valued in the same manner as claims for increased costs of operations in that the claims were reviewed to exclude costs that were incurred in relation to non-compensable areas or periods.

201. In some cases before the Panel, the claimants valued part of their evacuation-related losses on the basis of their published passenger and cargo tariffs for normal operations. In such cases, the Panel assessed the claims on the basis of those published tariffs adjusted, as necessary, to reflect, inter alia, the non-commercial nature of such operations, the difference between published fares and actual fares resulting from the normal discounting of published fares, and also to account for the occupancy rate of a particular transport craft or vehicle.

(d) Payment or relief to others

202. The evidence was reviewed to ensure that all compensable costs were supported by proof of payment. The type of evidence expected of claimants was determined by the nature of the payment involved: for instance, air fares could be evidenced by invoices from travel agents; payments for lost property or other items by invoices, ledgers or other business records. 86/

(e) Loss of tangible property

(i) Generally

203. In the case of tangible property losses, the Panel ascertained the existence of the property and the claimant's title to the property at the time of the loss. The Panel also reviewed the evidence submitted to establish the fact of the loss. The Panel then distinguished whether the claim was for costs incurred to repair or replace the asset, loss in the value of the asset, estimated repair costs or net book value.

204. For claims based on repair or replacement costs incurred, proof of payment was ascertained and the claims adjusted for any unsupported payments. The Panel then verified whether the claims reflected appropriate depreciation, normal maintenance or betterment. 87/ When the claimant had failed to do so, the Panel made the necessary adjustments.

205. For claims based on net book value, the Panel reviewed the documents provided to establish the cost and date of acquisition of the asset. The depreciation applied by the claimant was reviewed for reasonableness and the claim adjusted if necessary.

(ii) Cash

206. Cash loss claims were subjected to a high level of scrutiny as there is a greater potential for overstatement than in other categories of property claims. This is consistent with the practice of other panels. 88/

207. The Panel reviewed the statement of claim and supporting documents to verify whether all the circumstances of the loss appeared credible and whether any part of the cash loss could have been recovered or mitigated. The Panel sought credible and contemporaneous records of the level of cash maintained by the claimant from documents such as cash books and bank statements.

VI. INCIDENTAL ISSUES

A. Date of loss

208. In this section, the Panel determines "the date the loss occurred" within the meaning of decision 16 of the Governing Council, for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars.

209. The date when the loss occurred depends on the character of the loss. The claims for cancelled operations or decline in business leading to a loss of profits in this instalment concern losses that were suffered over an extended period of time. Consistent with the findings in its first and second reports, and also with the findings of other panels, the Panel selects the mid-point of the compensable period during which the loss occurred as the date of loss. All recommended awards are net of any individual interest claims advanced by the claimants.

210. For increased costs of operations, the Panel also selects the mid-point of the compensable period during which the costs were incurred as the date of loss. This is in conformity with the principle that increased costs of operations lead to a loss of profits, and should, therefore, be treated in the same way as the above.

211. For contract or contract-related claims, the Panel notes that the date of loss for each contract will depend on the facts and circumstances surrounding the non-performance of the contract. Given the vast number of contract-related claims that have been filed, and the fact that each of these claims could involve losses relating to more than one contract, a contract-by-contract determination of the date of loss would be unadministrable. The Panel is, therefore, of the opinion that the "twin objectives of speed and accuracy" referred to in paragraph 40 of its first report can only be met by the adoption of a common date of loss. The Panel deems, therefore, that contracts involving Iraq and Kuwait were frustrated as at 2 August 1990 and, accordingly, selects that date as the date of loss for all contract or contract related claims now under consideration.

212. For evacuation costs and payment of relief to others, the Panel notes that in general these costs were incurred over the period of the invasion and occupation of Kuwait and, therefore, adopts the mid-point of the occupation period as the date of loss for costs of this nature.

213. With respect to loss of tangible assets, the Panel selects 2 August 1990 as the date of the loss, as that coincides with the claimant's date of loss of control over the assets in question. This accords with earlier decisions of this and other Panels.

B. Currency exchange rates

214. The Panel notes that many of the claimants have advanced claims in currencies other than United States dollars. The Panel has assessed all such claims, and performed all claim calculations, in the original currencies of the claims. Since the Commission issues its awards in United States dollars, the Panel must, therefore, determine the exchange rate to be applied to claims where the losses are measured in other currencies.

215. Noting that all prior Commission compensation awards have relied upon the United Nations Monthly Bulletin of Statistics for determining commercial exchange rates into United States dollars, the Panel adopts that approach for this report.

216. The claims for cancelled operations or decline in business leading to a loss of profits concern losses that were suffered over an extended period of time. The claims for increased costs also extend over a period of time. The Panel decided that, for such claims, the appropriate rate will be the average of the rates reported in the United Nations Monthly Bulletin of Statistics for the months for which the claimant is compensated.

217. For contract-based losses, in keeping with decisions of previous panels, this Panel accepts that the contract rate is the applicable rate as this was specifically bargained for and agreed to by the parties. If there is no contractual rate, the Panel adopts the rate disclosed in the United Nations Monthly Bulletin of Statistics for the month of the date of loss.

218. For evacuation costs, the Panel adopts the decision of the "F1" Panel that the rate reported in the United Nations Monthly Bulletin of Statistics for the month of November 1990 is the most appropriate date for determining the applicable exchange rate for currencies other than the Kuwaiti dinar. 89/

219. With respect to claims for the loss of tangible assets, the Panel selects the rate as disclosed in the United Nations Monthly Bulletin of Statistics for the month of August 1990 as the appropriate rate.

220. The above rules apply to all claims denominated in currencies other than the Kuwaiti dinar. For awards measured in Kuwaiti dinars, the Panel takes note of the extreme fluctuation in the value of the Kuwaiti dinar during the period of the occupation, and adopts the decision of the "F1" and "E4" Panels to apply the rate ruling at 1 August 1990 as the most appropriate rate. This Panel also adopts the "E4" Panel's decision to use the rate disclosed in the United Nations Monthly Bulletin of Statistics for the month of July as the most appropriate measure for the rate ruling as at 1 August 1990.

C. Interest

221. Governing Council decision 16 states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". In decision 16, the Governing Council further specified that it would consider the method of calculation and of payment of interest at a later date and that "[i]nterest will be paid after the principal amount of awards". Accordingly, all claim figures in this report are net of any individual interest claims advanced by the claimants.

222. The task of the Panel, therefore, is to determine the date from which interest is to run for the claims in this instalment. With respect to the date from which interest will accrue for all compensable claims, in accordance with decision 16 of the Governing Council, the Panel selects the date when the loss occurred, as defined above.

D. Claims preparation costs

223. In a letter dated 6 May 1998, the Executive Secretary of the Commission advised the Panel that the Governing Council intends to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

VII. RECOMMENDATIONS

224. Based on the foregoing, the Panel recommends that the amounts set out in annex I below be paid in compensation for direct losses suffered by the claimants as a result of Iraq's unlawful invasion and occupation of Kuwait.

Geneva, 17 September 1999

(Signed) Mr. Bernard Audit
Chairman

(Signed) Mr. José-María Abascal
Commissioner

(Signed) Mr. David D. Caron
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ E2(1) report, paras. 38-48.

3/ See, for example, IATA Composite Resolution 003w, adopted at the Composite Passenger Tariff Coordinating Conference, and Composite Resolution 025aa adopted by the Composite Cargo Tariff Coordinating Committee at their meetings of 29-31 August 1990, permitting the imposition of surcharges by members, subject to approval of their governmental authorities (if required), to offset effects of the increase in fuel prices.

4/ The IATA interline scheme provides the framework for the conclusion of bilateral agreements between airlines incorporating a clearing house procedure for payments between subscribing airlines.

5/ The agreements, adopted after the invasion and occupation of Kuwait, designated "special dangerous areas" and, for varying periods, related to voyages to the Gulf of Aqaba, the ports of Saudi Arabia on the Red Sea, and the ports of Syria, Lebanon and Israel, as well as through the Persian Gulf. The agreements provided, inter alia, that seamen had to be warned if voyages were destined for a designated area and could not be compelled to enter such areas; and, if seamen consented to enter such areas, required the payment of extra allowances, the rates of which depended upon the particular waters or ports to be entered and whether the voyage was undertaken by a tanker or cargo vessel. See, for example, "Ratification of the Special Collective Agreement for voyages through the Arab Gulf, the Gulf of Aqaba and the ports of Saudi Arabia on the Red Sea", Entry No. 3, Decision No. 2325.11/1890, 11 September 1990, Ministerial Decisions and Approvals, Government Gazette of the Hellenic Republic, Issue B, No. 591.

6/ Paragraph 21 of decision 7 provides in relevant part that compensation is available:

"[W]ith respect to any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of

Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention."

7/ This is confirmed in decision 15 of the Governing Council which states that "[t]here will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait".

8/ E2(2) report, para. 64.

9/ Ibid.

10/ E2(2) report, para. 67. E2(1) report, paras. 158-161.

11/ For present purposes, the "territory" of a state includes the land areas, the waters adjacent thereto, and the airspace above such land and waters. The term "waters" is also used to refer to maritime areas used for international navigation, such as the Persian Gulf.

12/ E2(2) report, para. 65.

13/ E2(1) report, para. 162.

14/ E2(2) report, para. 64.

15/ E2(2) report, para. 66.

16/ E2(2) report, para. 102

17/ See paragraph 64 above, recalling the Panel's determinations in its second report.

18/ The "F1" Panel has determined that Qatar and Bahrain "were not the subject of any specific threat of military action". F1(3) report, para. 140.

19/ In the morning of 22 February 1991, a scud missile moving towards Bahrain was intercepted and landed in the Persian Gulf off the coast of Bahrain. In the night of 25 February 1991, an Iraqi scud missile landed in the territory of Qatar. On the same night, another scud missile was reported to have been destroyed in Bahrain's airspace. Joint Arab Forces Command news briefing, 22 February 1991 and 26 February 1991. Also reported by, inter alia, the Associated Press (26 February 1991), BBC Summary of World Broadcasts (28 February 1991) and Facts of File World News Digest (28 February 1991), Jane's Defence Weekly (2 March 1991), Jane's Intelligence Review (1 May 1991).

20/ E2(2) report, para. 64.

21/ See, for example, Bruce W. Watson ed., Military Lessons of the Gulf War (1991), p. 127.

22/ E2(2) report, para. 64.

23/ E2(2) report, para. 68.

24/ For the definitions of "territory" and "waters" as used in the present instalment, see note 11 supra.

25/ The airline industry can deploy its aircraft onto other routes or for other purposes. The shipping industry is similarly flexible, notably in that a ship that has discharged its cargo can be re-hired through the major shipping exchanges. Likewise, road carriers can deploy their vehicles on other routes.

26/ F1(2) report, para. 101.

27/ E3(1) report, paras. 177-178.

28/ E2(1) report, paras. 133 and 153. C(7) report, paras. 271-272.

29/ See discussion of steps taken to avoid double compensation at paragraph 181 below.

30/ E2(2) report, para. 60. See also F1(1.1) report, paras. 94-96.

31/ F1(1.1) report, para. 94 (agreeing with the holding of the Panel in the C(1) report, p. 13).

32/ The "F1" Panel concluded that costs incurred in transporting evacuees within their countries of nationality "are compensable, provided there was not a significant interruption in the evacuation journey so as to prevent it from being considered an ongoing journey". F1(2) report, para. 103.

33/ The provisions of paragraphs 21(d) and (e) are set out in note 6 above.

34/ E2(2) report, para. 75.

35/ An award of the "F1" Panel included additional premiums paid for war risk insurance. Such costs were incurred in respect of special flights performed under charter by Cyprus Airways to evacuate Cypriot nationals from Iraq and Kuwait and the terms of the charter specifically required the Government to pay "all costs and expenses involved or arising out of" such flights. For these reasons, the F1 Panel concluded that such costs were "an unavoidable expense relating to the three special evacuation flights". F1(2) report, para. 107.

36/ 7 UNRIAA 44 (1 November 1923).

37/ 7 UNRIAA 71 (11 March 1924).

38/ Administrative Decision I, 7 UNRIAA 21 (1 November 1923).

39/ The impact of intervening acts is considered substantively at paragraphs 70-72 of the E2(2) report.

40/ The Panel notes that the normal premiums payable for war risk insurance are not a direct consequence of the invasion as claimants would have paid such premiums in any event.

41/ See, for example, R. Salman, "The significance of 1990 in the oil industry", OPEC Review, vol. XV, No. 4, Winter 1991.

42/ The Governing Council stated: " 'The economic situation caused thereby' is a broader concept. The trade embargo and related measures had wider economic effects, both on international trade and on economic activity within Kuwait and Iraq. For example, the world price of oil was temporarily higher than it otherwise would have been and, in addition, countries which previously imported oil from Iraq and Kuwait had to find other sources of supply, with effects on transport and transit services and on refinery operating costs". Decision 15, paragraph 9(I)(ii).

43/ The few shipping claims for re-routing costs in this instalment failed on other grounds. Accordingly, the Panel makes no finding in that respect.

44/ See International Civil Aviation Organization, "Gulf contingency activities and developments in the Middle East region resulting from the invasion of Kuwait on 2 August 1990" ("the ICAO report"). See also The Kuwait Crisis: Basic Documents, eds. E. Lauterpacht, C.J. Greenwood, M. Weller and D. Bethlehem, (Grotius, 1991) at p. 321. On 8 August 1990, a Gulf Contingency Co-ordinating Team was established by ICAO because of the Middle East region's central role in the movement of international aviation traffic between Europe and Asia. The co-ordinating team identified five alternative "contingency routes" to accommodate traffic between Europe and Asia; ICAO report at p. 2.

45/ The nature and content of such agreements are described in note 5 above.

46/ E2(2) report, para. 78.

47/ Paragraph 9 of Governing Council decision 9, on the other hand, deals with the compensability of losses arising from "contracts where Iraq is not a party".

49/ E2(1) report, para. 116.

50/ E2(1) report, para. 82.

51/ For further discussion of this issue, see paragraph 151 below.

52/ Decision 7, para. 24; Decision 9, para. 6; Decision 15, para. 9.

53/ Decision 9, para. 6; Decision 15, para. 9.

54/ E2(1) report, paras. 164-169. The trade embargo was established under Security Council resolution 661 (1990), adopted on 6 August 1990. The application of the trade embargo to all forms of transport was specifically addressed in Security Council resolution 670 (1990), adopted on 25 September 1990. The trade embargo against Kuwait was lifted on 3 April 1991. The trade embargo against Iraq is still in force.

55/ See E2(1) report, para. 173.

56/ Decision 9, para. 6; Decision 15, paragraph 9(IV).

57/ E2 (1) report, para. 124. Other Panels have also interpreted the scope of the duty to mitigate in the context of the particular losses before them. See, for example, F1(1.1) report, para. 79; E3(1) report, para. 96; The WBC claim, paras. 117-118.

58/ E2(1) report, para. 132.

59/ E3(2) report, para. 14(d).

60/ See E2(2) report, paras. 81, 104 and 140.

61/ E2(2) report, para. 102-103.

62/ E2(2) report, para. 78.

63/ The applicable evidentiary standard is described in paragraph 105 above.

64/ The Panel does not address the situation where the claimant is a party to an existing contract to be performed in whole or in part in the compensable area.

65/ The Panel notes that the additional premium areas declared by underwriters were very broad, encompassing for varying periods the Persian Gulf, the Red Sea, as well as Cyprus, southern Turkey, Egypt, Syria, North and South Yemen, and other destinations.

66/ See further discussion in E2(2) report, para. 107.

67/ F1(2) report, para. 119.

68/ F1(3) report, paras. 125-128; D(2.1) report, paras 59-62; B(2.1) report, paras. 31-32.

69/ E1(3) report, paras. 433-435; F1(1.1) report, para. 85.

70/ E2(1) report, para. 141.

71/ The Panel confirms the application to the present instalment of its findings in paragraph 90 of its first report with respect to the Commission's jurisdiction over such debts, namely:

> "In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990."

72/ E2(1) report, paras. 115-118; E2(2) report, paras. 95-100.

73/ E2(2) report, para 89; E2(1) report, para. 145.

74/ E2(1) report, para. 145; E2(2) report, para. 89. See also, E4(1) report, para. 209.

75/ E2(1) report, para. 234. The Panel notes that claims for rent paid in respect of business premises have been dismissed by other Panels, on the ground, inter alia, that such expenses were normal operating expenses that the claimant would have incurred regardless of the invasion and occupation of Kuwait. See, for example, E3(2) report, paras. 66-67 and 121-123. See also F1(1.1) report, para. 74; F1(1.2) report, para. 53-56, F1(2) report, paras. 77-82.

76/ E3(1) report, para. 382, E3(2) report, paras. 44-47, 55-56, 66-68 and 121-123; E3(3) report, paras. 152-153.

77/ E2(1) report, paras. 213-15, 237-38.

78/ Similar conclusions have been reached by the "F1" Panel in respect of the claims included in part 1 of its first instalment and in its second instalment. See F1(1.1) report, para. 68 and F1(2) report, para. 84.

79/ Paragraph 22 of decision 7 provides that compensation is "available to reimburse payments made or relief provided by corporations or other entities - for example, to employees, or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council."

80/ F1(1.1) report, paras. 94-96. See also E2(2) report, paras. 60-61.

81/ E2(1) report, paras. 112 and 123.

82/ E2(1) report, para. 235.

83/ E2(1) report, paras. 136-40.

84/ Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC") informed the Commission that Kuwait had made "accounts freely available to all holders of bank accounts in Kuwait ... [thus] there will be no need for such persons to file a claim through the UN process". See F1(1.1) report, para. 82; D(2.1) report, para. 99.

85/ See Governing Council decision 13, para. 3.

86/ In respect of claims for compensation paid by claimants to employees for mental pain and anguish resulting from detention in Iraq or Kuwait lasting more than 3 days, the Panel has applied the ceilings established in Governing Council decision 8 which limits the compensation to be awarded in respect of such payments to US$10,000 per person.

87/ E2(1) report, paras. 271-271.

88/ See, for example, paragraph 127, E4(1) report.

89/ F1(1.1) report, para. 101.

Annex I: Recommended awards for the third instalment of "E2" claims

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
1	Austria	4000136	Austrian Airlines Osterreichische Luftverkehrs AG	ATS	75,240,134	6,841,256	Tangible property	ATS	184,468	13,109	Calculated loss is less than loss alleged (see paras. 180-207). Insufficient evidence of value (see paras. 175 & 186).	2,203,137
							Loss of profits	ATS	46,136,000	2,150,061	Calculated loss is less than loss alleged (see paras. 180-207). Insufficient evidence of value (see para. 186).	
							Insurance	ATS	24,024,763	39,967	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Unpaid receivables	ATS	1,945,769	0	Part or all of claim is unsubstantiated.	
							Other losses	ATS	2,749,134	0	Part or all of loss is not direct (see para. 53).	
2	Belgium	4000102	SV Sabena SA	USD	1,490,501	1,490,501	Insurance	USD	1,490,501	101,956	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	101,956

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
3	Belgium	4000185	Natisa Belgium NV	DEM	2,485,035	1,590,931	Advance rental payment / Tangible property	DEM	562,865	232,738	Part or all of loss sustained outside compensable period (see para. 77). Insufficient evidence of value.	580,608
							Bank balance	DEM	21,428	0	Part or all of loss is not direct (see para. 53).	
							Bank balance	DEM	257,085	Pending	Consideration of this element of the claim has been deferred to a later instalment when similar issues will be considered.	
							Unpaid receivables	DEM	165,300	0	Part or all of loss is not direct (see para. 53).	
							Contract loss	DEM	1,419,194	332,622	Part or all of claim is unsubstantiated. Deduction for failure to mitigate (see para. 114).	
							Payments to staff	DEM	59,164	15,248	Deduction for failure to mitigate (see para. 114).	
4	Brazil	4000020	MIT Transportes Maritimos Internacionais Limitada	USD	14,201,600	14,201,600	Payment or relief to others	USD	207,438	0	Part or all of loss is not direct (see para. 53).	0
							Payments to staff	USD	458,832	0	Part or all of claim is unsubstantiated.	
							Evacuation	USD	117,320	0		
							Other losses	USD	3,700,000	0	Part or all of loss is not direct (see para. 53).	
							Loss of profits	USD	3,908,000	0	Trade embargo is sole cause of loss (see para. 109-114).	
							Other losses	USD	5,810,010	0	Part or all of claim is unsubstantiated.	

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
5	Brunei Darussalam	4000609	Royal Brunei Airlines SDN BHD	USD	546,365	546,365	Insurance	USD	546,365	0	Part or all of loss sustained outside compensable area (see para. 77).	0
6	Bulgaria	4000021	International Road Transport Corporation "Somat" AG	USD	21,630,458	21,630,458	Advance rental payment	USD	58,170	0	Part or all of claim is unsubstantiated.	2,847,883
							Tangible property	USD	14,148,578	2,008,949	Calculated loss is less than loss alleged (see paras. 180-207).	
							Payments to staff	USD	615,010	296,938	Part or all of claim is unsubstantiated.	
							Loss of profits	USD	6,960,000	0		
							Unpaid receivables	USD	1,818,000	541,996	Pre-existing debt (see para. 151) Insufficient evidence of value.	
							Claim preparation costs	USD	10,500	Pending	To be resolved by Governing Council (see para. 223).	
7	China	4000846	Air China	USD	19,420,663	19,420,663	Contract loss	USD	167,293	7,456	Part or all of loss sustained outside compensable period (see para. 77).	14,227,307
							Payment to staff	USD	36,750	0	Part or all of claim is unsubstantiated. Part or all of loss is not direct (see para. 53). Part or all of loss sustained outside compensable period (see para. 77).	
							Loss of profits	USD	5,728,711	2,988,922	Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	USD	2,183,612	0		
							Tangible property	USD	5,906	5,906	N/A	
							Evacuation	USD	11,298,389	11,225,023	Part or all of claim is unsubstantiated.	
8	Cyprus	4000139	I&D Oil Carriers Limited	USD	235,359	1,397,452	Contract loss	USD	235,359	0	Part or all of claim is unsubstantiated.	0
				GBP	611,261		Other losses	GBP	611,261	0		
9	Cyprus	4000140	Rudi Navigation Limited	USD	735,135	735,135	Insurance	USD	735,135	661,621	Non-compensable risks covered by war risk insurance (see para. 91)	661,621

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
10	Cyprus	4000157	Holy Shipping Limited	USD	8,400	8,400	Unpaid receivables	USD	8,400	8,374	Calculated loss is less than loss alleged (see paras. 180-207).	8,374
11	Cyprus	4000170	Waterdiamond Marine Limited	USD	3,312	3,312	Insurance	USD	3,312	0	Part or all of loss sustained outside compensable area (see para. 77).	0
12	Cyprus	4000171	Euroventure Shipping Limited	USD	74,074	74,074	Insurance	USD	74,074	66,666	Non-compensable risks covered by war risk insurance (see para. 91).	66,666
13	Cyprus	4000172	Silverose Marine Limited	USD	42,160	42,160	Insurance	USD	42,160	37,944	Non-compensable risks covered by war risk insurance (see para. 91).	37,944
14	Cyprus	4000207	Cyprus Airways Limited	USD	19,895,377	19,895,377	Loss of profits	USD	15,228,978	3,676,000	Calculated loss is less than loss alleged (see paras. 180-207).	3,676,000
							Insurance	USD	607,309	0		
							Fuel	USD	4,059,090	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
15	Cyprus	4000213	Anole Marine Company Limited	USD	141,314	141,314	Insurance	USD	141,314	25,330	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	25,330
16	Cyprus	4000215	Petrolina Limited	USD	3,464,940	3,464,940	Loss of profits	USD	3,464,940	0	Part or all of loss sustained outside compensable area (see para. 77).	0
17	Cyprus	4000218	Yale Shipping Company Limited Limassol	USD	6,684	6,684	Insurance	USD	6,684	0	Part or all of loss sustained outside compensable area (see para. 77).	0
18	Cyprus	4000219	Trade Mariner Navigation Limited	USD	342,830	342,830	Contract loss	USD	216,201	119,950	Calculated loss is less than loss alleged (see paras. 180-207).	119,950

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
							Loss of profits	USD	44,567	0	Part or all of claim is unsubstantiated. Deduction for failure to mitigate (see para. 114).	
							Interest	USD	82,062	Pending	To be resolved by Governing Council (see paras. 221-222).	
19	Cyprus	4000220	Monopoly Marine Company Limited	USD	62,236	62,236	Payments to staff	USD	9,683	7,357	Part or all of loss sustained outside compensable period (see para. 77).	51,173
							Insurance	USD	52,553	43,816	Part or all of loss sustained outside compensable period (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
20	Cyprus	4000221	Kitsa Shipping Company Limited	USD	74,247	74,247	Payments to staff	USD	6,563	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Insurance	USD	67,684	0		
21	Czech Republic	4000299	Czechoslavak Airlines Joint Stock Company	USD	874,599	874,599	Tangible property	USD	3,959	1,979	Insufficient evidence of value.	26,066
							Repairs and renovations	USD	3,023	1,511		
							Unpaid receivables	USD	22,576	22,576	N/A	
							Re-routing	USD	845,041	0	Losses relating to re-routing are not direct (see para. 99).	
22	Denmark	4000050	A/S Dampskibsselskabet Svendborg and Dampskibsselskabet of 1912, A/S trading in partnership under the name of Maersk Line	USD	3,385,562	3,508,304	Tangible property (containers)	USD	3,341,000	3,025,573	Part or all of claim is unsubstantiated.	3,025,573
				GBP	35,136		Other losses	GBP	35,136	0		
				SGD	98,740			SGD	98,740	0		
							Loss of profits	USD	44,562	0		

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
23	Egypt	4002615	Egyptair Organisation	USD	410,332,348	410,332,348	Bank balance	USD	110,166,427	Pending	Consideration of this element of the claim has been deferred to a later instalment when similar issues will be considered.	46,752,124
							Loss of profits	USD	238,080,053	46,604,921	Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	USD	13,451,376	147,203	Insufficient evidence of value. Part or all of loss sustained outside compensable period (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Fuel	USD	48,634,492	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
24	Egypt	4002878	East Delta Bus Company	EGP	3,500,000	1,750,000	Loss of profits	EGP	3,500,000	0	Part or all of claim is unsubstantiated.	0
25	Egypt	4002879	General Nile Company for Transport Works	EGP	3,829,683	1,914,842	Contract loss	EGP	3,829,683	0	Part or all of claim is unsubstantiated.	0
26	Egypt	4002880	The Nile General Company for River Transport	EGP	950,000	475,000	Loss of profits	EGP	950,000	0	Part or all loss sustained outside compensable area (see para. 77).	0
27	Egypt	4002881	The General Nile Company for Heavy Transport	USD	10,146,528	10,146,528	Contract loss	USD	10,146,528	0	Part or all of claim is unsubstantiated.	0
28	Egypt	4002882	Nile Company for Water Transport	USD	192,915	192,915	Loss of profits	USD	192,915	0	Part or all of loss sustained outside compensable area (see para. 77). Part or all of claim is unsubstantiated.	0

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
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29	Egypt	4002883	Federal Arab Land Transport (The Arab Union for Road Transport)	USD	33,332	1,223,364	Loss of profits	USD	33,332	0	Part or all of claim is unsubstantiated.	0
				EGP	2,380,063			EGP	2,380,063	0		
30	Egypt	4002884	The Nile General Company for Direct Transport	USD	1,119,991	1,119,991	Contract loss	USD	859,807	0	Part or all of claim is unsubstantiated.	0
							Unpaid receivables	USD	260,184	0		
31	Egypt	4002911	Ismailia National Transport Company (S.A.E.)	USD	1,349,201	1,349,201	Tangible property	USD	150,458	150,458	N/A	795,303
							Tangible property (trucks)	USD	306,637	306,637	N/A	
							Payments to staff	USD	44,199	0	Part or all of claim is unsubstantiated.	
							Loss of profits	USD	441,969	273,908		
							Unpaid receivables	USD	64,300	64,300	N/A	
							Interest	USD	341,618	Pending	To be resolved by Governing Council (see paras. 221-222).	
32	Ethiopia	4000789	Ethiopian Airlines	USD	26,914,344	26,914,344	Loss of profits	USD	2,124,200	0	Part or all of claim is unsubstantiated.	0
							Insurance	USD	1,879,199	0		
							Fuel	USD	22,910,945	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
33	Federal Republic of Yugoslavia	4002395	Public Enterprise Yugoslav Airlines	USD	8,713,599	8,713,599	Payments to staff	USD	33,702	0	Part or all of claim is unsubstantiated.	3,409,141
							Loss of profits / Evacuation	USD	6,053,088	3,278,573	Calculated loss is less than loss alleged (see paras. 180-207).	
							Evacuation by bus	USD	41,861	32,044	Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	USD	218,942	98,524	Non-compensable risks covered by war risk insurance (see para. 91).	
							Interest	USD	2,346,006	Pending	To be resolved by Governing Council (see paras. 221-222).	
							Claim preparation costs	USD	20,000	Pending	To be resolved by Governing Council (see para. 223).	

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34	Finland	4000792	Finnair Oy	USD	346,727	346,727	Insurance	USD	346,727	96,581	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	96,581
35	France	4001780	Compagnie Nationale Air France	FRF	329,650,857	62,886,466	Contract loss	FRF	45,000,000	0	Part or all of claim is unsubstantiated.	25,710,845
							Tangible property	FRF	480,000	45,784		
							Insurance	FRF	107,116,286	0		
							Bank balance	FRF	21,490,000	3,388,901	Non-compensable element of bank balance claim (see para. 169).	
							Payments to staff	FRF	5,964,551	541,900	Insufficient evidence of value. Part or all of claim is unsubstantiated.	
							Loss of profits	FRF	149,600,000	21,734,260	Calculated loss is less than loss alleged (see paras. 180-207).	
							Other losses	FRF	20	0		
36	France	4001832	Watson Brown SA	FRF	3,045,516	580,984	Unpaid receivables	FRF	3,045,516	0	Pre-existing debt (see para. 151)	0
37	France	4001874	Compagnie d'Affretement et de Transport	FRF	296,207	56,506	Unpaid receivables	FRF	296,207	0	Pre-existing debt (see para. 151)	0
38	France	4001973	SMTT (Societe Maritime de Transit et de Transports)	FRF	156,011	29,762	Unpaid receivables	FRF	156,011	0	Part or all of claim is unsubstantiated.	0
39	Germany	4000381	Interport Stoob GmbH	DEM	10,406	6,662	Unpaid receivables	DEM	10,406	6,662	N/A	6,662
40	Germany	4000561	Senator Linie GmbH & Co. KG	USD	819,670	819,670	Tangible property (containers)	USD	373,662	373,662	N/A	388,612
							Other losses	USD	247,993	14,950	Part or all of loss sustained outside compensable period and/or area (see para. 77).	
							Insurance	USD	198,015	0		
41	Germany	4000852	LTU Luftransport-Unternchmen GmbH & Co. KG	DEM	2,259,068	1,446,266	Re-routing	DEM	264,924	0	Losses relating to re-routing are not direct (see para. 99).	0

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				Amount claimed in original currency a/			Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
							Insurance	DEM	1,653,307	0	Part or all of claim is unsubstantiated.	
							Fuel	DEM	340,837	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
42	Germany	4000877	Lufthansa German Airlines	DEM	23,421,919	24,344,593	Tangible property	DEM	166,172	39,894	Insufficient evidence of value.	1,689,057
				USD	9,349,766		Payments to staff	DEM	1,003,043	329,514	Part or all of claim is unsubstantiated.	
							Loss of profits	DEM	18,984,400	1,114,323	Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	USD	9,349,766	166,126	Calculated loss is less than loss alleged (see paras. 180-207).	
								DEM	3,268,303	39,200	Non-compensable risks covered by war risk insurance (see para. 91).	
43	Germany	4000935	Hapag-Lloyd Flug Limited	DEM	38,879,000	24,890,525	Loss of profits	DEM	8,896,000	180,888	Part or all of loss sustained outside compensable period and/or area (see para. 77). Insuffic.ent evidence of value.	180,888
							Insurance	DEM	747,000	0	Part or all of loss sustained outside compensable period and/or area (see para. 77).	
							Fuel	DEM	17,668,000	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Interest	DEM	11,568,000	Pending	To be resolved by Governing Council (see paras. 221-222)	

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
44	Germany	4000936	Rickmers-Linie GmbH Hamburg	USD	1,138,175	1,138,175	Insurance	USD	114,918	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Fuel	USD	1,023,257	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
45	Germany	4000940	Lufthansa Cargo Airlines GmbH	USD	867,949	867,949	Insurance	USD	867,949	0	Part or all of loss sustained outside compensable area (see para. 77).	0
46	Germany	4000943	Condor Flugdienst GmbH	USD	883,438	2,295,512	Re-routing	DEM	1,825,096	0	Losses relating to re-routing are not direct (see paras. 97-99).	0
				DEM	2,205,660		Insurance	DEM	380,564	0	Part or all of claim is unsubstantiated.	
								USD	883,438	0		
47	Greece	4000225	Concord Carriers Limited	USD	68,898	68,898	Insurance	USD	60,648	0	Not compensable under Governing Council decision 19 (see para. 140).	0
							Payments to staff	USD	8,250	0		
48	Greece	4000226	Gourdomichalis Maritime SA	USD	10,817	10,817	Insurance	USD	10,817	0	Not compensable under Governing Council decision 19 (see para. 140).	0
49	Greece	4000227	Bilinder Marine Corporation SA	USD	4,643,003	4,643,003	Payments to staff	USD	1,199,268	324,555	Part or all of loss sustained outside compensable period and/or area (see para. 77).	1,163,328
							Insurance	USD	3,443,735	838,773	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	

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50	Hungary	4000273	Malev Hungarian Airlines PLC	KWD	440,400	1,523,875	Loss of profits	KWD	435,600	820,273	Part or all of loss sustained outside compensable period (see para. 77).	826,501
							Tangible property	KWD	4,800	6,228	Part or all of claim is unsubstantiated. Insufficient evidence of value.	
51	Hungary	4000282	Hungarocamion International Road Transport Company Limited by Shares	USD	260,753	260,753	Advance rental payments	USD	249,750	46,884	Part or all of loss sustained outside compensable period (see para. 77)	48,389
							Tangible property	USD	4,011	1,505	Insufficient evidence of value.	
							Loss of cash	USD	3,364	0	Part or all of claim is unsubstantiated.	
							Loss of profits	USD	3,628	0		
52	India	4000648	Air India	USD	1,706,645	1,706,645	Tangible property	USD	478,552	91,435	Insufficient evidence of value.	223,983
							Loss of profits	USD	625,915	0	Part or all of claim is unsubstantiated.	
							Unpaid receivables	USD	602,178	132,548		
53	India	4000722	Air India Limited	USD	9,274,926	9,274,926	Bank balance	USD	9,274,926	8,344,926	Non-compensable element of bank balance claim (see para. 169).	8,344,926
54	Ireland	4001348	Aer Lingus PLC	IEP	95,780	164,005	Payments to staff	IEP	71,166	118,561	Part or all of loss is not direct (see para. 53).	159,879
							Evacuation	IEP	4,414	5,817		
							Payment or relief to others	IEP	20,200	35,501	N/A	
55	Ireland	4001352	GPA Group PLC	USD	111,949	111,949	Insurance	USD	111,949	0	Part or all of claim is unsubstantiated	0

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56	Islamic Republic of Iran	4001339	Islamic Republic of Iran Shipping Lines Valfajre - 8 shipping lines (affiliated)	USD	560,373	560,373	Payments to staff	USD	9,053	0	Part or all of claim is unsubstantiated.	56,808
							Other losses	USD	355	0		
							Insurance	USD	59,935	0		
							Loss of profits	USD	426,030	56,808	Insufficient evidence of value. Part or all of claim is unsubstantiated.	
							Fuel	USD	50,000	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Claim preparation costs	USD	15,000	Pending	To be resolved by Governing Council (see para. 223).	
57	Israel	4000328	El-Al Israel Airline Limited	USD	73,379,128	73,379,128	Re-routing	USD	399,745	0	Losses relating to re-routing are not direct (see paras. 97-99).	6,977,711
							Relocation of fleet	USD	4,895,546	4,895,546	N/A	
							Loss of profits	USD	37,622,214	1,908,594	Part or all of loss sustained outside compensable period (see para. 77).	
							Insurance	USD	1,043,580	173,571	Part or all of loss sustained outside compensable period (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Fuel	USD	29,418,043	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
58	Israel	4000341	Arkia Israeli Airlines Limited	USD	2,445,163	2,445,163	Loss of profits	USD	2,445,163	0	Part or all of claim is unsubstantiated.	0
59	Israel	4001100	Zim Israel Navigation Company Limited	USD	1,097,200	1,097,200	Loss of profits	USD	1,097,200	0	Trade embargo is sole cause of loss (see para. 109-112).	0

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60	Italy	4001058	Navigazione Alga SpA	USD	139,986	139,986	Loss of profits	USD	139,986	0	Part or all of claim is unsubstantiated.	0
61	Italy	4001074	Compagnia Ligure di Navigazione SRL	USD	1,468,809	1,468,809	Tangible property (ship)	USD	1,212,500	0	Part or all of loss is not direct (see para. 53).	0
							Interest	USD	256,309	0	Principal amount not compensable.	
62	Italy	4001280	Carbofin Spa	USD	276,314	276,314	Insurance	USD	276,314	153,036	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	153,036
63	Italy	4001296	Comisal SpA (now Termisal SpA)	ITL	2,446,000,000	2,109,894	Payments to staff	ITL	30,000,300	0	Part or all of loss sustained outside compensable area (see para. 77) Part or all of claim is unsubstantiated.	0
							Loss of profits	ITL	2,134,999,300	0		
							Insurance	ITL	281,000,400	0		
64	Italy	4001329	Lloyd Triestino di Navigazione SpA	USD	137,082	137,082	Tangible property (containers)	USD	117,262	19,813	Insufficient evidence of value.	19,813
							Insurance	USD	19,820	0	Part or all of claim is unsubstantiated.	
65	Italy	4001331	Premuda Societa di Navigazione per Azioni	USD	1,398	15,317	Insurance	USD	1,398	0	Part or all of claim is unsubstantiated.	0
				ITL	16,135,750			ITL	16,135,750	0		
66	Italy	5000101	Alitalia-Linee Aeree Italiane SpA	ITL	397,419,604,000	342,809,975	Loss of profits	ITL	275,545,163,000	6,902,964	Calculated loss is less than loss alleged (see paras. 180-207).	6,902,964
							Insurance	ITL	7,721,597,000	0		
							Fuel	ITL	111,739,187,000	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Re-routing	ITL	2,332,250,000	0	Losses relating to re-routing are not direct (see paras. 97-99).	
							Other losses	ITL	81,407,000	0	Part or all of loss is not direct (see para. 53).	
67	Italy	5000102	Aero Trasporti Italiani ITA SpA	ITL	69,988,000,000	60,370,911	Loss of profits	ITL	43,795,000,000	0	Part or all of claim is unsubstantiated.	0
							Insurance	ITL	17,000,000	0		

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							Fuel	ITL	26,156,000,000	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
68	Japan	4000967	Japan Airlines Co. Limited	JPY	221,801,534	1,537,619	Tangible property	JPY	18,445,405	95,903	Insufficient evidence of value.	1,365,636
							Bank balance	JPY	201,971,084	1,260,131	Non-compensable element of bank balance claim (see para. 169).	
							Loss of contracts	JPY	1,385,045	9,602	N/A	

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69	Jordan	4002435	Royal Jordanian Airlines	JOD	18,720,681	292,587,670	Payments to staff	USD	351,071	205,852	Insufficient evidence of value.	15,373,507
				USD	233,741,649		Loss of profits	USD	219,618,810	10,397,368	Calculated loss is less than loss alleged (see paras. 180-207).	
							Relocation of fleet	USD	917,441	917,441	N/A	
							Insurance	USD	7,508,809	1,820,998	Part or all of loss sustained outside compensable period (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Re-training of pilots	USD	308,700	31,848	Part or all of loss is not direct (see para. 53).	
							Fuel	USD	11,177,704	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Re-routing	USD	286,158	0	Losses relating to re-routing are not direct (see paras. 97-99).	
							Unpaid receivables	USD	346,286	0	Part or all of loss is not direct (see para. 53).	
							Other losses	USD	15,906,525	0		
							Interest	USD	16,166,164	Pending	To be resolved by Governing Council (see paras. 221-222).	
70	Jordan	4002621	Ministry of Transport/ Jordanian National Shipping Lines Company Limited (J.N.S.L.)	JOD	43,856,862	66,651,766	Loss of profits	JOD	38,066,609	0	Part or all of loss sustained outside compensable area (see para. 77).	
							Interest	JOD	5,790,253	0	Principal amount not compensable.	

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71	Jordan	4002622	Public Transport Corporation	JOD	9,142,475	13,894,319	Loss of profits	JOD	7,418,426	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Interest	JOD	1,724,049	0	Principal amount not compensable.	
72	Jordan	4002623	Jordanian Syrian Land Transport Company	JOD	2,292,782	1,484,471	Loss of profits	JOD	1,772,162	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Interest	JOD	520,620	0	Principal amount not compensable.	
73	Jordan	4002625	Unified Company for Organising Land Transport	JOD	2,586,962	1,931,553	Payment or relief to others	JOD	201,012	301,820	N/A	517,652
							Payments to staff	JOD	65,000	97,598	N/A	
							Loss of profits	JOD	1,944,345	118,234	Calculated loss is less than loss alleged (see paras. 180-207).	
							Interest	JOD	376,605	Pending	To be resolved by Governing Council (see paras. 221-222).	
74	Jordan	4005970	Jordan Express Tourist Transport Company Limited	JOD	4,945,600	7,516,109	Loss of profits	JOD	4,153,263	0	Part or all of loss sustained outside compensable area (see para. 77).	0 c/
							Interest	JOD	792,337	0	Principal amount not compensable.	
75	Korea	4001098	Korean Airlines Co. Limited	USD	5,238,560	5,238,560	Bank balance	USD	5,328,560	4,699,547	Non-compensable element of bank balance claim (see para. 169).	4,699,547
76	Liberia	4001135	Star Value Shipping Corporation	USD	134,516	134,516	Insurance	USD	134,516	121,322	Non-compensable risks covered by war risk insurance (see para. 91).	121,322
77	Liberia	4001136	Treasure Shipping & Trading Company	USD	58,030	58,030	Insurance	USD	58,030	26,113	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	26,113

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78	Liberia	4001138	Bannon Trading Incorporated	USD	21,060	21,060	Insurance	USD	21,060	0	Part or all of loss sustained outside compensable area (see para. 77).	0
79	Liberia	4001139	Brookstream Shipping Incorporated	USD	178,513	178,513	Insurance	USD	178,513	4,821	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	4,821
80	Liberia	4001140	Intrepid Marine Investments Limited	USD	175,421	175,421	Insurance	USD	175,421	11,642	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	11,642
81	Liberia	4001141	Golar Perth Incorporated	USD	9,625	9,625	Insurance	USD	9,625	0	Part or all of loss sustained outside compensable area (see para. 77).	0
82	Liberia	4001142	Golar Khannur Incorporated	USD	17,269	17,269	Insurance	USD	17,269	0	Part or all of loss sustained outside compensable area (see para. 77).	0
83	Liberia	4001143	Gotaas-Larsen Tankship Incorporated	USD	9,625	9,625	Insurance	USD	9,625	8,662	Non-compensable risks covered by war risk insurance (see para. 91).	8,662
84	Liberia	4001144	Golar Freeze Incorporated	USD	6,552	6,552	Insurance	USD	6,552	0	Part or all of loss sustained outside compensable area (see para. 77).	0
85	Liberia	4001145	Golar Hill Incorporated	USD	5,335	5,335	Insurance	USD	5,335	0	Part or all of loss sustained outside compensable area (see para. 77).	0
86	Liberia	4001146	Golar Gimi Incorporated	USD	17,269	17,269	Insurance	USD	17,269	0	Part or all of loss sustained outside compensable area (see para. 77).	0
87	Liberia	4001159	Margarita Shipping SA c/o Enterprises Shipping and Trading SA	USD	790	790	Insurance	USD	790	0	Part or all of loss sustained outside compensable period (see para. 77).	0

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88	Liberia	4001160	Aurora Borealis Maritime Corporation	USD	95,213	95,213	Payments to staff	USD	34,339	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Insurance	USD	60,874	0		
89	Liberia	4001161	Zarnata Maritime Corporation	USD	34,611	34,611	Payments to staff	USD	14,576	14,576	N/A	32,607
							Insurance	USD	20,035	18,031	Non-compensable risks covered by war risk insurance (see para. 91).	
90	Liberia	4001162	Lavandara Maritime Corporation	USD	17,074	17,074	Payments to staff	USD	2,713	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Insurance	USD	14,361	0		
91	Liberia	4001163	Ateni Maritime Corporation	USD	62,275	62,275	Payments to staff	USD	33,346	28,861	Part or all of claim is unsubstantiated.	54,897
							Insurance	USD	28,929	26,036	Non-compensable risks covered by war risk insurance (see para. 91).	
92	Liberia	4001164	Aurora Australis Maritime Corporation	USD	324,811	324,811	Payments to staff	USD	56,584	36,467	Part or all of loss sustained outside compensable area (see para. 77).	259,248
							Insurance	USD	268,227	222,781	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
93	Liberia	4001165	Leopard Shipping Corporation c/o Enterprises Shipping and Trading SA	USD	3,517	3,517	Insurance	USD	3,517	0	Part or all of loss sustained outside compensable period (see para. 77).	0
94	Liberia	4001166	Spartan Marine Limited c/o Enterprises Shipping and Trading SA	USD	2,290	2,290	Insurance	USD	2,290	0	Part or all of loss sustained outside compensable period (see para. 77).	0

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95	Liberia	4001167	Plakoura Maritime Corporation	USD	99,954	99,954	Insurance	USD	66,944	0	Part or all of loss sustained outside compensable period and/or area (see para. 77).	0
							Payments to staff	USD	33,010	0		
96	Liberia	4001168	Akoi Maritime Corporation	USD	35,713	[illegible]	Insurance	USD	15,442	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Payments to staff	USD	20,271	0		
97	Liberia	4001169	Boukadoura Maritime Corporation	USD	153,902	[illegible],02	Insurance	USD	98,607	49,048	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	67,373
							Payments to staff	USD	55,295	18,325	Part or all of loss sustained outside compensable area (see para. 77).	
98	Liberia	4001170	Seahope Shipping Corporation c/o Enterprises Shipping and Trading SA	USD	25,779	25,779	Insurance	USD	25,779	0	Part or all of loss sustained outside compensable area (see para. 77). Part or all of claim is unsubstantiated.	0
99	Liberia	4001171	Navicargo Shipping Company SA	USD	42,295	42,295	Insurance	USD	42,295	0	Part or all of loss sustained outside compensable area (see para. 77). Part or all of claim is unsubstantiated.	0
100	Liberia	4001172	Enterprises Shipping and Trading SA	USD	103,240	103,240	Insurance	USD	103,240	0	Part or all of loss sustained outside compensable period (see para. 77).	0
101	Liberia	4001173	Myrtia Marine SA c/o Enterprises Shipping and Trading SA	USD	790	790	Insurance	USD	790	0	Part or all of loss sustained outside compensable period (see para. 77).	0
102	Liberia	4001174	Mimoza Marine SA c/o Enterprises Shipping and Trading SA	USD	21,569	21,569	Insurance	USD	21,569	0	Part or all of loss sustained outside compensable period and/or area (see para. 77).	0

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
103	Liberia	4001175	Eptal'ofos Shipping Corporation	USD	357,998	357,998	Insurance	USD	357,998	147,329	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	147,329
104	Liberia	4001176	Magnolia Shipping SA c/o Enterprises Shipping and Trading SA	USD	18,137	18,137	Insurance	USD	18,137	0	Part or all of loss sustained outside compensable area (see para. 77).	0
105	Luxembourg	4001147	Cargolux Airlines International SA	USD	1,666,969	1,666,969	Insurance	USD	1,666,969	0	Part or all of claim is unsubstantiated.	0
106	Malta	4001126	Seamusic Shipping Company Limited	USD	2,550,000	2,550,000	Loss of profits	USD	2,550,000	0	Part or all of claim is unsubstantiated.	0
107	Malta	4001127	Canso Shipping Limited	USD	21,067	21,067	Insurance	USD	21,067	6,497	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	6,497

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
108	Malta	4001128	Margarita Investments Company Limited	USD	49,125	49,125	Loss of profits	USD	30,000	22,500	Part or all of claim is unsubstantiated.	31,106
							Insurance	USD	19,125	8,606	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
109	Malta	4001129	Elena Shipping Limited	USD	45,008	45,008	Insurance	USD	45,008	20,254	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	20,254
110	Malta	4001130	Air Malta Company Limited	USD	5,333,193	5,333,193	Loss of profits	USD	694,800	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Insurance	USD	92,406	0	Part or all of loss sustained outside compensable period and/or area (see para. 77).	
							Fuel	USD	4,545,987	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
111	Netherlands	4001397	Climax Molybdenum B.V.	USD	6,200	6,200	Loss of profits	USD	6,200	0	Part or all of loss sustained outside compensable area (see para. 77).	0
112	Netherlands	4001400	Henk Braams B.V. Shipping and Forwarding	USD	1,035	1,035	Loss of profits	USD	1,035	0	Part or all of loss sustained outside compensable area (see para. 77).	0
113	Netherlands	4001411	Roba Handelmaatschappij B.V.	USD	2,740	2,740	Loss of profits	USD	2,740	0	Part or all of loss sustained outside compensable period and/or area (see para. 77).	0

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
114	Netherlands	4001537	KLM Royal Dutch Airlines	USD	218,603,038	218,603,038	Contract loss	USD	4,303,605	636,683	Part or all of loss is not direct (see para. 53).	29,514,664
							Tangible property	USD	177,672	66,627	Insufficient evidence of value.	
							Payments to staff	USD	257,338	96,502		
							Loss of profits	USD	204,649,714	28,714,852	Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	USD	9,214,709	0		
115	Netherlands	4001563	Martinair Holland NV	NLG	717,292	407,321	Loss of profits	NLG	393,672	0	Part or all of claim is unsubstantiated.	0
							Fuel	NLG	323,620	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
116	Netherlands	4001564	Vroon International BV	USD	1,307,183	1,307,183	Contract loss	USD	1,307,183	326,796	Part or all of loss is not direct (see para. 53). Deduction for failure to mitigate (see para. 114).	326,796
117	Netherlands	4001566	Vervoersmaatschappij "De Boezem" B.V.	NLG	800	454	Unpaid receivables	NLG	800	0	Part or all of claim is unsubstantiated.	0
118	Netherlands	4001569	Van der Sluijs Tankrederij B.V.	USD	416,800	416,800	Fuel	USD	416,800	0	Losses relating to fuel costs are not direct (see paras. 94-96).	0
119	Norway	4001156	Bergen Bulk Carriers A/S	USD	241,165	241,165	Insurance	USD	241,165	83,150	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	83,150
120	Norway	4001157	Marawah KS c/o Stavanger Drilling A/S	USD	442,175	442,175	Loss of profits	USD	35,000	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Insurance	USD	407,175	0		

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
121	Norway	4001158	Araba Holdings Incorporated c/o Gearbulk Limited	USD	1,125,771	1,125,771	Loss of profits	USD	735,611	0	Trade embargo is sole cause of loss (see para. 109-112).	390,160
							Unpaid receivables	USD	390,160	390,160	N/A	
122	Pakistan	4001203	Pakistan International Airlines Corporation	KWD	4,573,861	15,826,509	Tangible property	KWD	20,738	0	Part or all of claim is unsubstantiated.	0
							Other tangible property	KWD	454,336	0		
							Payments to staff	KWD	98,787	0		
							Loss of profits	KWD	4,000,000	0		
123	Panama	4001206	Oyster Marine Management Incorporated SA	USD	232,661	232,661	Payments to staff	USD	38,000	0	Part or all of claim is unsubstantiated.	133,821
							Loss of profits	USD	143,181	96,081	Part or all of loss is not direct (see para. 53). Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	USD	30,000	27,000	Non-compensable risks covered by war risk insurance (see para. 91).	
							Other losses	USD	21,480	10,740	Part or all of loss is not direct (see para. 53).	
124	Panama	4001216	Calera Panama SA	USD	12,811	12,811	Insurance	USD	12,811	0	Part or all of loss sustained outside compensable period (see para. 77).	0
125	Panama	4001217	Kelso Panama SA	USD	7,168	7,168	Insurance	USD	7,168	0	Part or all of loss sustained outside compensable period (see para. 77).	0
126	Panama	4001218	Osborne Panama SA	USD	5,990	5,990	Insurance	USD	5,990	0	Part or all of loss sustained outside compensable period (see para. 77).	0
127	Panama	4001220	Granton Marine Panama SA	USD	14,133	14,133	Insurance	USD	14,133	0	Part or all of loss sustained outside compensable period (see para. 77).	0

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
128	Panama	4001221	Beverly Marine Panama SA	USD	38,813	38,813	Insurance	USD	38,813	6,385	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	6,385
129	Panama	4001222	Grafton Shipping Panama SA	USD	69,921	69,921	Insurance	USD	69,921	46,780	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	46,780
130	Poland	4001320	LOT Polish Airlines SA Polskie Linie Lotnicze LOT SA	USD	8,633,410	8,633,410	Loss of profits	USD	8,633,410	34,365	Part or all of claim is unsubstantiated. Calculated loss is less than loss alleged (see paras. 180-207).	34,365
131	Poland	4001332	Pekeas Auto-Transport Joint Stock Company	USD	2,741,506	2,741,506	Advance rental payments	USD	159,347	18,756	Part or all of loss sustained outside compensable period (see para. 77).	31,946
							Loss of profits	USD	220,824	0	Insufficient evidence of value.	
							Unpaid receivables	USD	2,185,160	0	Part or all of claim is unsubstantiated.	
							Other losses	USD	21,200	13,190	Part or all of loss sustained outside compensable period (see para. 77).	
							Claim preparation costs	USD	154,975	Pending	To be resolved by Governing Council (see para. 223).	

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
132	Portugal	4001226	TAP Air Portugal	USD	134,866	134,866	Insurance	USD	112,453	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Interest	USD	22,413	0	Principal amount not compensable.	
133	Russian Federation	4005779	Aeroflot Russian International Airlines	USD	29,231,313	29,231,313	Advance rental payments / Tangible property / Repairs	USD	5,426,499	277	Part or all of loss sustained outside compensable period (see para. 77). Part or all of claim is unsubstantiated. Part or all of loss is not direct (see para. 53).	6,058,610
							Evacuation	USD	6,914,912	4,654,423	Calculated loss is less than loss alleged (see paras. 180-207).	
							Loss of profits	USD	14,702,231	1,403,910	Calculated loss is less than loss alleged (see paras. 180-207). Part or all of loss sustained outside compensable period (see para. 77).	
							Re-routing	USD	2,187,671	0	Losses relating to re routing are not direct (see paras. 97-99).	
134	Saudi Arabia	4002461	Saudi Limousine Company Limited	SAR	715,000	190,921	Loss of profits	SAR	715,000	0	Part or all of claim is unsubstantiated.	0

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
135	Saudi Arabia	4002482	The National Shipping Company of Saudi Arabia	USD	3,607,560	3,616,907	Payments to staff	USD	346,813	0	Part or all of claim is unsubstantiated.	287,440
				SAR	35,000		Loss of profits	USD	322,592	0		
							Insurance	USD	1,554,031	287,440	Part or all of loss is not direct (see para. 53). Part or all of loss sustained outside compensable period (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Other losses	USD	1,384,124	0	Part or all of claim is unsubstantiated.	
							Claim preparation costs	SAR	35,000	Pending	To be resolved by Governing Council (see para. 223).	
136	Saudi Arabia	4002538	Kanoo Terminal Services Limited	SAR	203,104	386,129	Payments to staff	SAR	184,204	16,321	Part or all of claim is unsubstantiated.	21,368
							Other losses	SAR	18,900	5,047	N/A	
137	Singapore	4001478	Singapore Airlines Limited	USD	1,648,848	1,648,848	Insurance	USD	1,648,848	0	Part or all of loss sustained outside compensable area (see para. 77).	0
138	Spain	4001576	Hoppe y Compania SA	ESP	12,012,177	123,392	Unpaid receivables	ESP	9,259,502	82,647	Pre-existing debt (see para. 151)	82,647
							Interest	ESP	2,752,675	Pending	To be resolved by Governing Council (see paras. 221-222).	
139	Spain	4001591	Roca Monzo SA	ESP	4,515,000	46,379	Loss of profits	ESP	4,515,000	0	Part or all of loss is not direct (see para. 53).	0
140	Sri Lanka	4001668	Srilankan Airlines Limited (formerly Airlanka)	USD	2,479,052	2,479,052	Insurance	USD	2,479,052	690,540	Calculated loss is less than loss alleged (see paras. 180-207). Non-compensable risks covered by war risk insurance (see para. 91).	690,540

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
141	Sudan	4001373	Sudan Airways	USD	82,881,935	82,881,935	Bank balance	USD	22,356,954	21,566,194	Non-compensable element of bank balance claim (see para. 169).	28,051,181
							Evacuation	USD	5,198,738	1,219,069	Calculated loss is less than loss alleged (see paras. 180-207).	
							Loss of profits	USD	47,669,548	5,265,918		
							Insurance	USD	1 031,608	0		
							Interest	USD	6,625,087	Pending	To be resolved by Governing Council (see paras. 221-222).	
142	Sudan	4001448	Sudan Shipping Line Limited	USD	15,526,590	15,526,590	Payments to staff	USD	570,000	0	Part or all of loss is not direct (see para. 53).	619,853
							Evacuation	USD	1,510,288	619,853	Part or all of claim is unsubstantiated.	
							Loss of profits	USD	13,030,890	0	Part or all of claim is unsubstantiated. Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	USD	415,412	0	Part or all of loss sustained outside compensable area (see para. 77).	
143	Sweden	4001481	Scandinavian Airlines System Denmark – Norway – Sweden	USD	1,034,843	1,034,843	Insurance	USD	1,034,843	10,803	Calculated loss is less than loss alleged (see paras. 180-207). Non compensable risks covered by war risk insurance (see para. 91).	10,803

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				Amount claimed in original currency a/			Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
144	Switzerland	4001511	"Swissair" Swiss Air Transport Company Limited	CHF	52,958,741	40,989,738	Tangible property	CHF	380,760	142,366	Insufficient evidence of value.	8,207,915
							Other tangible property	CHF	116,681	45,156		
							Payments to staff	CHF	422,715	305,272	N/A	
							Loss of profits	CHF	41,516,800	6,934,923	Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	CHF	8,961,499	718,168	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Fuel	CHF	1,400,000	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Unpaid receivables	CHF	160,286	62,030	Part or all of claim is unsubstantiated.	

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
145	Thailand	4001596	Thai Airways International Limited	USD	17,098,310	17,098,310	Contract loss	USD	1,324,889	35,938	Part or all of loss sustained outside compensable period (see para. 77). Insufficient evidence of value.	9,687,326
							Tangible property	USD	39,608	19,804	Insufficient evidence of value.	
							Payments to staff	USD	107,351	107,351	N/A	
							Loss of profits	USD	12,506,992	8,983,836	Part or all of loss sustained outside compensable period (see para. 77). Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	USD	1,423,079	334,532	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non compensable risks covered by war risk insurance (see para. 91).	
							Unpaid receivables	USD	1,113,600	205,865	Pre-existing debt (see para. 151)	
							Other losses	USD	582,791	0	Part or all of claim is unsubstantiated	
146	Tunisia	4002605	Compagnie Tunisienne de Navigation	USD	13,560,000	13,560,000	Loss of profits	USD	11,192,000	0	Insufficient evidence of value. Part or all of loss sustained outside compensable area (see para. 77).	0
							Unpaid receivables	USD	14,000	0	Part or all of claim is unsubstantiated	
							Fuel	USD	2,154,000	0	Losses relating to fuel costs are not direct (see paras. 94-96).	

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147	Tunisia	4002606	Societe Tunisienne de L'Air "Tunisair"	TND	50,482,367	58,632,250	Evacuation	TND	505,866	397,498	Part or all of claim is unsubstantiated.	8,307,476
							Loss of profits	TND	38,810,119	7,907,674	Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	TND	476,074	2,304	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Fuel	TND	10,690,308	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
148	Turkey	4001599	Cemre Shipping and Trading Company	USD	524,250	524,250	Contract loss	USD	277,250	93,500	Part or all of claim is unsubstantiated.	220,086
							Loss of profits	USD	22,000	0		
							Unpaid receivables	USD	67,500	0		
							Payments to staff	USD	32,500	32,500	N/A	
							Insurance	USD	125,000	94,086	Part or all of loss sustained outside compensable period (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
149	Turkey	4001605	Enak Marketing, Storage Transportation Corporation	USD	157,500	157,500	Tangible property (containers)	USD	156,000	58,500	Insufficient evidence of value.	58,500
							Other losses	USD	1,500	0	Part or all of claim is unsubstantiated.	

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150	Turkey	4001606	Oztecirli International Transport	USD	41,684	41,684	Tangible property (trucks)	USD	26,589	13,294	Insufficient evidence of value.	13,294
							Loss of profits	USD	15,095	0	Part or all of claim is unsubstantiated.	
151	Turkey	4001651	DB Turkish Cargo Lines	USD	7,031,559	7,150,845	Loss of profits	USD	6,980,139	0	Part or all of claim is unsubstantiated.	0
				DEM	186,324		Loss of profits	DEM	186,324	0		
							Insurance	USD	51,420	0	Part or all of loss sustained outside compensable period and/or area (see para. 77).	
152	Turkey	4001723	Bamtrans International Transport & Trade Company Limited	USD	59,233	59,233	Unpaid receivables	USD	59,233	0	Pre-existing debt (see para. 151). Part or all of claim is unsubstantiated.	0
153	Turkey	4001724	Akan-Sel International Transport Company	USD	1,537,209	1,537,209	Loss of profits	USD	666,182	0	Part or all of claim is unsubstantiated.	201,503
							Bank balance	USD	78,834	0	Part or all of loss is not direct (see para. 53).	
							Unpaid receivables	USD	620,624	201,503	Pre-existing debt (see para. 151).	
							Interest	USD	171,569	Pending	To be resolved by Governing Council (see paras. 221-222).	
154	Turkey	4001725	Surat International Transport Export Incorporated	USD	138,061	138,061	Unpaid receivables	USD	80,188	80,188	N/A	80,188
							Bank balance	USD	57,873	0	Part or all of loss is not direct (see para. 53).	
155	Turkey	4001755	Turkish Airlines Incorporated	USD	30,518,080	30,518,080	Loss of profits	USD	26,023,509	23,104,971	Calculated loss is less than loss alleged (see paras. 180-207).	23,398,071
							Insurance	USD	4,265,464	63,993	Calculated loss is less than loss alleged (see paras. 180-207). Non-compensable risks covered by war risk insurance (see para. 91).	
							Unpaid receivables	USD	229,107	229,107	N/A	

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156	United Arab Emirates	4001694	Dubai Air Wing	USD	829,676	829,676	Insurance	USD	829,676	0	Part or all of loss sustained outside compensable area (see para. 77).	0
157	United Arab Emirates	4001749	Emirates	USD	10,596,254	10,596,254	Tangible property	USD	53,015	26,522	Insufficient evidence of value.	8,782,826
							Tangible property (containers)	USD	10,472	5,239		
							Loss of cash	USD	2,382	0	Part or all of claim is unsubstantiated.	
							Payments to staff	USD	136,367	27,266	Part or all of claim is unsubstantiated. Insufficient evidence of value.	
							Loss of profits	USD	8,723,799	8,723,799	N/A	
							Insurance	USD	274,585	0	Calculated loss is less than loss alleged (see paras. 180-207).	
							Fuel	USD	1,325,402	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Unpaid receivables	USD	70,232	0	Part or all of loss is not direct (see para. 53).	
158	United Kingdom	4001848	Cathay Pacific Airways Limited	KWD	60,941	210,869	Payments to staff	KWD	4,813	0	Part or all of claim is unsubstantiated.	0
							Unpaid receivables	KWD	56,128	0	Part or all of claim is unsubstantiated.	
159	United Kingdom	4001893	Monarch Airlines Limited	GBP	2,416,239	4,593,610	Loss of profits	GBP	1,966,503	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Insurance	GBP	5,937	0		
							Interest	GBP	443,799	0	Principal amount not compensable.	
160	United Kingdom	4001945	Orient Overseas Container Line Limited	USD	429,234	429,234	Insurance	USD	429,234	0	Part or all of loss sustained outside compensable area (see para. 77).	0

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
161	United Kingdom	4001999	Norasia Lines Limited	USD	3,952,480	3,952,480	Tangible property (containers)	USD	1,222,199	222,199	Calculated loss is less than loss alleged (see paras. 180-207).	257,149
							Loss of profits	USD	816,746	0	Part or all of claim is unsubstantiated.	
							Insurance	USD	1,294,278	15,783	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Payments to staff	USD	59,800	19,167	Part or all of loss sustained outside compensable period and/or area (see para. 77).	
							Unpaid receivables	USD	24,645	0	Part or all of claim is unsubstantiated.	
							Interest	USD	529,153	Pending	To be resolved by Governing Council (see paras. 221-222).	
							Claim preparation costs	USD	5,659	Pending	To be resolved by Governing council (see para. 223).	
162	United Kingdom	4002018	Ellerman Lines PLC	GBP	96,414	183,297	Tangible property (containers)	GBP	96,414	91,648	Insufficient evidence of value.	91,648

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
163	United Kingdom	4002094	World Wide Shipping Agency Limited	USD	17,849,106	17,849,106	Payments to staff	USD	376,328	178,307	Part or all of loss sustained outside compensable area (see para. 77). Part or all of claim is unsubstantiated.	6,916,314
							Fuel	USD	613,286	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Insurance	USD	16,859,492	6,738,007	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
164	United Kingdom	4002111	Gracesea Limited	USD	10,287,803	10,287,803	Loss of profits	USD	9,872,735	0	Part or all of loss sustained outside compensable period (see para. 77).	48,127
							Insurance	USD	415,068	48,127	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
165	United Kingdom	4002154	Blue Star Line Limited	GBP	155,712	296,030	Other tangible property	GBP	66,278	63,002	Insufficient evidence of value.	179,439
							Tangible property (containers)	GBP	89,434	116,437		
166	United Kingdom	4002261	Cathay Pacific Airways Limited	USD	4,988,596	4,988,596	Insurance	USD	4,988,596	0	Part or all of loss sustained outside compensable area (see para. 77).	0

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
167	United Kingdom	4002267	British Airways Plc	GBP	5,691,133	16,459,012	Tangible property	GBP	242,498	230,511	Insufficient evidence of value.	6,142,853
				USD	5,639,368			USD	145,127	145,127	N/A	
							Payments to staff	GBP	1,411,130	2,098,777	Part or all of loss is not direct (see para. 53). Part or all of claim is unsubstantiated. Deduction to avoid multiple recovery (See para. 181).	
							Loss of profits	GBP	2,214,378	1,924,076	Part or all of loss is not direct (see para. 53). Part or all of claim is unsubstantiated.	
							Insurance	GBP	1,823,125	906,606	Part or all of loss sustained outside compensable period and/or area (see para. 77).	
								USD	5,494,241	837,756	Non-compensable risks covered by war risk insurance (see para. 91).	
168	United Kingdom	4002278	GB Airways Limited	GBP	190,768	362,677	Loss of profits	GBP	190,768	0	Part or all of loss sustained outside compensable area (see para. 77).	0
169	United Kingdom	4002292	The Hadley Shipping Company Limited	USD	97,119	97,119	Loss of profits	USD	37,170	0	Trade embargo is sole cause of loss (see para. 109-112).	0
							Insurance	USD	59,949	0	Part or all of loss sustained outside compensable area (see para. 77).	

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
170	United Kingdom	4005969	Thomson Travel	USD	4,989,552	5,071,153	Insurance	GBP	42,922	0	Part or all of loss sustained outside compensable area (see para. 77).	0 d/
				GBP	42,922			USD	256,785	0		
							Fuel	USD	4,351,048	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Re-routing	USD	381,719	0	Losses relating to re-routing are not direct (see para. 99).	
171	United States of America	4000620	Sea-Land Service Incorporated	USD	387,675	387,675	Tangible property (containers)	USD	387,675	363,387	Part or all of claim is unsubstantiated.	363,387
172	United States of America	4000634	Waterman Steamship Corporation	USD	1,128,627	1,128,627	Insurance	USD	1,128,627	0	Not compensable under Governing Council decision 19 (see para. 140).	0
173	United States of America	4000636	Zapata Gulf Marine Corporation (A)	USD	4,171,527	4,171,527	Tangible property	USD	3,200,000	3,200,000	N/A	3,920,659
							Insurance	USD	406,800	406,800	N/A	
							Unpaid receivables	USD	157,850	157,850	N/A	
							Other losses	USD	45,000	0	Part or all of loss is not direct (see para. 53).	
							Loss of profits	USD	361,877	156,009	Part or all of claim is unsubstantiated.	
174	United States of America	4002340	American President Lines Limited	USD	1,001,880	1,001,880	Tangible property (containers)	USD	1,001,880	500,940	Insufficient evidence of value.	500,940
175	United States of America	4002341	Chestnut Shipping Company	USD	69,846	69,846	Payments to staff	USD	15,988	0	Not compensable under Governing Council decision 19 (see para. 140).	0
							Insurance	USD	53,858	0		
176	United States of America	4002344	Liberty Maritime Corporation	USD	197,643	197,643	Insurance	USD	197,643	0	Part or all of loss sustained outside compensable area (see para. 77).	0
177	United States of America	4002498	Chevron Shipping Company	USD	137,000	137,000	Insurance	USD	137,000	0	Not compensable under Governing Council decision 19 (see para. 140).	0

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
178	United States of America	4002505	Farrell Lines Incorporated	USD	87,200	87,200	Loss of profits	USD	87,200	0	Not compensable under Governing Council decision 19 (see para. 140).	0
179	United States of America	4002506	Gold Container Corporation	USD	132,786	132,786	Tangible property (containers)	USD	132,786	42,385	Insufficient evidence of value.	42,385

Notes to table of recommended awards

a/ Currency codes: ATS (Austrian schilling), CHF (Swiss franc), DEM (Deutsche mark), EGP (Egyptian pound), ESP (Spanish peseta), FRF (French franc), GBP (Pound sterling), IEP (Irish pound), ITL (Italian lira), JPY (Japanese yen), JOD (Jordanian dinar), KWD (Kuwaiti dinar), NLG (Netherlands guilder), SAR (Saudi Arabian riyal), SGD (Singapore dollar), TND (Tunisian dinar), USD (United States dollar).

b/ For claims originally expressed by the claimant in currencies other than United States dollars, the secretariat has converted the amount claimed to United States dollars based on August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics, or in cases where this exchange rate is not available, the latest exchange rate available prior to August 1990. This conversion is made solely to provide an indication of the amount claimed in United States dollars for comparative purposes. In contrast, the date of the exchange rate that was applied to calculate the recommended amount is described in paragraphs 214-220.

c/ The total amount stated herein reflects the total value of the claim asserted by the claimant. However, in the present instalment the Panel considered only those claims in respect of a contract to transport tourists within Jordan. Other claims by the same claimant were reviewed by this Panel in its second report under UNCC claim no. 4002626.

d/ Other claims submitted by the same claimant were reviewed by the Panel in its second report under UNCC claim no. 4002128.

Annex II: List of reasons stated in Annex I for denial in whole or part of the claimed amount

I. COMPENSABILITY

1. Pre-existing debt. All or part of the claim is based on a debt or obligation of Iraq that arose prior to 2 August 1990 and is outside the jurisdiction of the Commission pursuant to resolution 687 (1991). (See para. 151.)

2. Part or all of loss is not direct. The claimant has failed to demonstrate that the losses alleged are, in whole or part, a direct result of Iraq's invasion and occupation of Kuwait as required under resolution 687 (1991). (See para. 53.)

3. Losses relating to fuel costs are not direct. Additional costs stemming from increased fuel prices are not a direct result of Iraq's invasion and occupation of Kuwait as required under Resolution 687 (1991). (See para. 94-96.)

4. Losses relating to re-routing are not direct. Re-routing costs are not a direct result of Iraq's invasion and occupation of Kuwait as required under resolution 687 (1991). (See paras. 97-99.)

5. Non-compensable element of bank balance held in Iraq. A deduction is made to reflect that part of the funds which would have been expended locally by the claimant. (See para. 169.)

6. Part of loss relates to insurance cover for non-compensable risks. A deduction is made for that portion of additional premium payments in respect of cover for risks, such as terrorism, which do not result directly from Iraq's invasion and occupation of Kuwait as required under resolution 687 (1991). (See para. 91.)

7. Part or all of loss is outside compensable period. All or part of the loss occurred outside the period of time during which the Panel has determined that a loss may be directly related to Iraq's invasion and occupation of Kuwait. (See para. 77.)

8. Part or all of loss is outside compensable area. All or part of the loss occurred outside the geographical area within which the Panel has determined that a loss may be directly related to Iraq's invasion and occupation of Kuwait. (See para. 77.)

9. Trade embargo is sole cause. The loss claimed was caused exclusively by the application of the trade embargo or related measures imposed by or in implementation of resolution 661 (1990) and other relevant resolutions. (See paras. 109-112.)

10. Loss is not compensable under Governing Council decision 19. The claim relates to costs in connection with operations of the Allied Coalition Forces. (See para. 140.)

11. No loss established. The claimant has not established that any loss was suffered.

II. VERIFICATION AND VALUATION

12. Part or all of claim is unsubstantiated. The claimant has failed to file documentation substantiating its claim; or, where documents have been provided, these do not demonstrate the circumstances or amount of part or all of the claimed loss as required under article 35 of the Rules.

13. Calculated loss is less than loss alleged. Applying the Panel's valuation methodology (see paras. 180-207), the value of the claim was assessed to be less than that asserted by the claimant.

14. Insufficient evidence of value. The claimant has produced insufficient evidence to prove all or part of the value of its losses, as required under article 35 of the Rules.

15. Reduction to avoid multiple recovery. Although the claim is found to be eligible, an award has already been made for the same loss in another claim before the Commission. Accordingly, the amount of compensation awarded in the other claim has been deducted from the compensation calculated for the present claim, in keeping with Governing Council decision 13, para. 3. (See para. 181.)

16. Deduction for failure to mitigate. The claimant has not taken such measures as were reasonable in the circumstances to minimize the loss as required under paragraph 23 of Governing Council decision 9 and paragraph 9(IV) of decision 15. (See para. 114.)

III. OTHER GROUNDS

17. Interest. The issue of methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time pursuant to Governing Council decision 16 (See para. 221). Moreover, where the Panel has recommended that no compensation be paid for the principal amounts claimed, a nil award is recommended for interest claimed on such principal amounts.

18. Claim preparation costs. The issue of claim preparation costs is to be resolved by the Governing Council at a future date. (See para. 223.)